

BUSINESS MEETING
STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION

ENERGY COMMISSION
1516 NINTH STREET
HEARING ROOM A, FIRST FLOOR
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 30, 2001

10:00 A.M.

JAMES F. PETERS, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSION MEMBERS

William Keese, Chairperson

Robert Laurie

Michal Moore

Robert Pernell

Arthur Rosenfeld

James Boyd, Resources Agency

STAFF

Steve Larson, Executive Director

Bill Chamberlain, Chief Counsel

Cheri Davis, Project Manager

Lisa DeCarlo, Staff Counsel

Susan Gefter, Hearing Officer

Chuck Najarian

Dick Ratliff, Staff Counsel

Garret Shean, Hearing Officer

Kerry Willis, Staff Counsel

ALSO PRESENT

Issa Ajlouny

Michael Boyd

Peter Camp (via phone)

Mike Carroll

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APPEARANCES CONTINUED

ALSO PRESENT

Tony Chapman

William Claycomb(via phone)

Jim Cole

Elizabeth Cord

Holly Duncan(via phone)

Christopher Ellison

Bob James

Michael Meacham(via phone)

Sharon Segner(via phone)

Alicia Torre

Emilio E. Varanini

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INDEX

	PAGE
Pledge of Allegiance	1
1. Consent Calendar A and C	1
1B Energy Pro 3.1	1
2. Metcalf Energy Center	21
Mr. Mike Boyd	22
Ms. Duncan	27
Ms. Cord	27
Mr. Ajlouny	36
3. Mirant Delta LLC's	48
4. Pegasus Power Partners LLC	61
5. East Altamont Energy Center	61 107
6. East Altamont Energy Center	61 107
7. Bottle Rock Power Corp	82
8. Contra Costa Water District	97
9. Department of Motor Vehicles	98
10. New Buildings Institute	98
11. Lawrence Berkeley National Laboratory	99
12. Gas Technology Institute	99
13. Wind Turbine Company	100
14. PIER Environmental Technical Support Contract	101
15. Electric Power Research Institute (EPRI)	101
16. University of California, Irvine	102
17. California Air Resources Board	102

INDEX CONTINUED

	PAGE
18. Carl Moyer Advanced Technology Program	103
19. Minutes	115
20. Energy Commissioner and Oversight	115
21. Chief Counsel's Report	115
22. Executive Director's Report	115
23. Public Adviser's Report	115
24. Public Comment	116
25. Modesto Irrigation District	104
26. Site Regulations, General Discussion	104
27. Otay Mesa Generating Project	3
Mr. Claycomb	5
Ms. Duncan	9
Mr. Meacham	11
Mr. Mike Boyd	15
Mr. Carroll	16
Adjournment	116
Reporter's Certificate	117

1 PROCEEDINGS

2 CHAIRPERSON KEESE: I'll call the meeting of the
3 Energy Commission to order. Commissioner Rosenfeld, would
4 you lead us in the pledge, please.

5 (Thereupon Commissioner Rosenfeld led the
6 Pledge of Allegiance.)

7 CHAIRPERSON KEESE: Thank you. We're going to
8 change the order a little bit here. But as we start, we
9 have a consent calendar, and item B is withdrawn and we
10 make that a discussion item.

11 Do I have a motion on the consent calendar, Items
12 A and C.

13 COMMISSIONER MOORE: Move consent.

14 COMMISSIONER PERNELL: Second.

15 CHAIRPERSON KEESE: Moved by Commissioner Moore
16 seconded by Commissioner Pernell.

17 All in favor?

18 (Ayes.)

19 CHAIRPERSON KEESE: Opposed?

20 Adopted five to nothing.

21 Item B, Business Meeting Agenda, proposed that
22 EnergyPro 3.1 be approved and that EnergyPro 3.0 be
23 decertified effective August 1st, 2001.

24 Move the transmission to the new computer program
25 for low-rise residential building. The Building Industry

1 requested and the Commission approve the decertification
2 be delayed for EnergyPro 3.0 in part because only
3 documentation changes not computational changes are
4 required for the new certification process.

5 To be consistent for low-rise residential
6 Compliance Alternative Calculation Methods, staff and the
7 Committee proposes to delay the decertification of
8 EnergyPro 3.0 low-rise residential compliance until
9 January 1st, 2002.

10 However, when EnergyPro 3.0 is used for
11 nonresidential compliance a different computational engine
12 is used and computational changes were incorporated into
13 the ACM approval process for nonresidential and high-rise
14 residential compliance that modify how chillers were to be
15 modeled.

16 Consequently, staff proposes and the Committee
17 concurs that EnergyPro 3.0 be decertified for residential
18 and high-rise residential compliance on August 1st, 2001,
19 per the original agenda item.

20 Could I have a motion to that effect?

21 COMMISSIONER PERNELL: Mr. Chairman, as you had
22 stated, that item did come before the Committee, and I
23 would move the item.

24 COMMISSIONER ROSENFELD. Second.

25 CHAIRPERSON KEESE: Motion by Commission Pernell,

1 second by Commissioner Rosenfeld.

2 Any further comments?

3 All in favor?

4 (Ayes.)

5 CHAIRPERSON KEESE: Opposed?

6 Adopted five to nothing.

7 We will then, as a courtesy to those on the
8 telephone, take up Item 27 Otay Mesa Generating Project.

9 Commission consideration of the petition for
10 reconsideration filed by Save Our Bay regarding the Energy
11 Commission's Decision certifying the Otay Mesa Generating
12 Project proposed by PG&E National Energy Group docket
13 number 99-AFC-5.

14 Ms. Gefter.

15 MS. GEFTER: The Commission approved the Otay
16 Mesa Generating Project on April 18th of this year. The
17 30-day period for reconsideration ended on May 21st.
18 Intervenor Save Our Bay filed a timely petition for
19 reconsideration on May 14th.

20 I understand that Mr. Claycomb representing Save
21 Our Bay is on the phone, as well as Sharon Segner
22 representing the applicant and also Mike Carroll is here
23 for the applicant. And staff is also here.

24 To summarize the petition, Save Our Bay asserts
25 that the decision does not cite a study on the

1 photovoltaic research mentioned by the intervenor. He
2 also challenges the findings that the coordination of
3 locations and interconnections for photovoltaic facilities
4 is beyond the scope of this proceeding. Also, he is
5 concerned about global warming, and asserts that the
6 decision does not address that issue.

7 We recommend that the petition for
8 reconsideration be denied. I'm speaking here as the
9 hearing officer on behalf of the Committee that heard this
10 case, because we're the most familiar with the issues.

11 The intervenor, Mr. Claycomb who represents Save
12 Our Bay, participated in all the hearings at this case and
13 had presented evidence and cross-examined witnesses on
14 both the photovoltaic issues and the global warming issue.

15 We believe the Intervenor's assertions do not
16 present any issues of law or fact that would warrant
17 reconsideration.

18 CHAIRPERSON KEESE: Thank you, Ms. Gefter.
19 Commissioner Laurie.

20 COMMISSIONER LAURIE: I have nothing to add, Mr.
21 Chairman. I suggest we hear from the appellant.

22 CHAIRPERSON KEESE: Are you there on the phone?

23 COMMISSIONER LAURIE: That's Mr. Claycomb.

24 CHAIRPERSON KEESE: -- Mr. Claycomb?

25 MR. CLAYCOMB: Yes, this is Claycomb.

1 CHAIRPERSON KEESE: Yes. Now, that you have
2 identified yourself for the record, do you have anything
3 to say on this issue?

4 MR. CLAYCOMB: I have quite a bit to say.

5 CHAIRPERSON KEESE: Well, you're not going to get
6 to say that much, but we'll give you five minutes.

7 MR. CLAYCOMB: Five minutes?

8 CHAIRPERSON KEESE: Right.

9 MR. CLAYCOMB: Okay. Well, throughout this
10 proceeding we have got into the record that global warming
11 is a serious problem and will be exacerbated by emissions
12 of carbon dioxide from the Otay Mesa generating plant.
13 And the solution to that problem is to use photovoltaic
14 generation of electricity, fuel cell generation of
15 electricity to solve the problem.

16 At least weekly now, more information comes out
17 about the seriousness of global warming. Science of
18 Oceanography was just reported to have found that global
19 warming is, in fact, happening, and it is, in fact, due to
20 emissions caused by generation of electricity, the burning
21 of fossil fuels.

22 There's another new report out by the
23 Governmental Panel on Climate Change. It's the third
24 assessment by working group number one. And that has now
25 been reported. And I just would like to get into the

1 record several things from that report. This is working
2 group number one.

3 It was prepared by 122 coordinating league
4 offices, 515 contributing offices, 21 review editors and
5 37 expert reviewers. There were delegations from 99 ITCC
6 member countries who participated in the eighth session of
7 working group number one.

8 They reported that El Ninos have been more
9 frequent, persistent and intense since the mid 1970s
10 compared with the previous 100 years.

11 Concentration of atmospheric gases and the
12 warming effect of watts per square meter have continued to
13 increase as a result of human activities. The CO2
14 concentration has not been exceeded during the past
15 420,000 years and likely not during the last 20 million
16 years. About 75 percent of man-caused emissions of CO2
17 during the past 20 years is due to fossil fuel burning.

18 Confidence in climate model conditions of future
19 climates has increased. In 1750 the CO2 atmospheric
20 concentration was 280 parts per million. To stabilize the
21 concentration at 450 parts per million would require
22 reducing man caused emissions within a few decades to
23 below 1990 levels.

24 CHAIRPERSON KEESE: Mr. Claycomb.

25 MR. CLAYCOMB: Yes.

1 CHAIRPERSON KEESE: You know, I am familiar with
2 most of the material you're giving me, and I believe my
3 fellow Commissioners are also. Would you --

4 MR. CLAYCOMB: Who's this speaking?

5 CHAIRPERSON KEESE: I would suggest --

6 MS. DUNCAN: Identify yourself, please.

7 CHAIRPERSON KEESE: This is the Chairman of the
8 Commission. I would suggest that you focus on what you
9 have in front of us, which is a petition.

10 MR. CLAYCOMB: Yes.

11 CHAIRPERSON KEESE: And suggest why we might -- I
12 mean, we can discuss global warming quite a bit, but we
13 need to know why we should honor your request.

14 MR. CLAYCOMB: Well, because the Otay Mesa
15 generating plant is going to put out 1,787,000 plus 40
16 tons of carbon dioxide each year. And that is certainly
17 going to contribute to a worsening of global warming not
18 lessen it.

19 CHAIRPERSON KEESE: And you believe the -- did
20 the Committee make a finding on this issue?

21 MR. CLAYCOMB: I'm sorry, please repeat that.

22 CHAIRPERSON KEESE: Did the Committee hear of
23 this issue at the hearing and did they issue --

24 MR. CLAYCOMB: No, they didn't hear what I just
25 told you.

1 CHAIRPERSON KEESE: Ms. Gefter.

2 MS. GEFTER: Mr. Claycomb has presented quite a
3 bit of information on global warming. During the course
4 of the hearings, we addressed the information that he
5 presented in the record, and we addressed it in the
6 decision. Anything that he seeks to offer now is outside
7 the scope of the record.

8 CHAIRPERSON KEESE: Thank you.

9 MR. CLAYCOMB: Let me add one thing then.

10 CHAIRPERSON KEESE: Certainly.

11 MR. CLAYCOMB: I think the Energy Commission
12 certainly has an obligation to keep Governor Gray Davis
13 informed. And I have never heard Gray Davis use the words
14 photovoltaic. I don't think he knows what it is.

15 I think it's your responsibility to get this news
16 out to him. And if you can't get it to him, maybe you
17 have to convince Lynn Shenk first. And if you're not
18 interested in doing that, I'll pray for your grandchildren
19 along with my own.

20 CHAIRPERSON KEESE: Thank you. I will say that
21 the Governor did include substantial benefits for
22 photovoltaics in his recently signed legislation, and has
23 put forward quite a bit of money that the Energy
24 Commission will be dispensing for photovoltaics.

25 Thank you for your comment.

1 Is there anyone else on the phone who would care
2 to comment on this petition?

3 One by one please identify yourself.

4 MS. DUNCAN: Holly Duncan, Intervenor.

5 CHAIRPERSON KEESE: Thank you, Ms. Duncan.

6 MS. DUNCAN: I just wish to support the
7 statements made by Mr. William Claycomb. I intervened on
8 the basis of air quality. I also believe that global
9 warming is happening. And my concerns go beyond the
10 scope. That's fine you can say that, but my concerns are
11 the same concerns as Mr. Claycomb's regarding global
12 warming, because global warming affects our air quality as
13 well. We're talking about a multidisciplinary integrated
14 situation here that is out of control.

15 I also am deeply concerned of what I see
16 occurring at the California Energy Commission is that you
17 are implementing, whether you will accept that or not, you
18 are implementing an energy policy for this State that is
19 heavily tilted towards fossil fuel technologies.

20 I dispute Ms. Gefter's and Commissioner Laurie's
21 claims that these were issues that were adequately
22 resolved and explored throughout the proceedings. My
23 alternative proposal as well as Mr. Claycomb's put forth
24 an alternative energy policy that is both sane and
25 rational, and now as Mr. Claycomb is attempting to get

1 this Commission's attention on is also cost competitive,
2 when you look at the lifecycle of this technology.

3 These are things that were never discussed in
4 this proceeding. They should have been. They should be
5 discussed in every single siting case before you right
6 now, including peaker plants. But instead what you are
7 doing is by fiat implementing an energy policy that is not
8 in the interests of any citizen of the State of California
9 nor is it in the interests of the rest of the residents of
10 the planet earth.

11 CHAIRPERSON KEESE: Thank you.

12 MS. DUNCAN: And I wish to support his petition.
13 I think it's unfortunate that you refuse to reopen the
14 record on something of fundamental importance to all of
15 us, including you, including you. You live on this planet
16 too. I, once again, want to ask like Alice In Wonder
17 Land, what planet are all of you going to escape to when
18 this one will no longer support life as we know it?

19 There is an excellent book out Farewell Fossil
20 Fuels written by Sidney Borowitz. It came out in 1999.
21 For those of you who may not know who this is, he's a
22 former Chancellor of NYU, and he was on the New York
23 Academy of Sciences, and he supports Claycomb's and my
24 position for clean, zero and low emission distributed
25 generation, and not large power plants that cause global

1 warming problems for all of us.

2 So I am very disappointed that you are
3 recommending denial of this petition. I want the record
4 to reflect that.

5 CHAIRPERSON KEESE: Thank you. And do we have
6 anyone else on the phone?

7 MS. SEGNER: This is Sharon Segner with PG&E
8 Nation Energy Group. Mike Carroll is present at the
9 hearing and can speak to any comments on the applicant's
10 behalf.

11 CHAIRPERSON KEESE: Thank you. I have his name
12 here. Anyone else?

13 MR. MEACHAM: Michael Meacham with the City of
14 Chula Vista.

15 CHAIRPERSON KEESE: Mr. Meacham.

16 MR. MEACHAM: Mr. Chairman and Committee Members,
17 thank you very much for allowing us the time and
18 opportunity to speak before the Committee. I wanted to
19 call in and let the Commissioners know that the City of
20 Chula Vista supports Mr. Claycomb's philosophy and
21 concerns about the cumulative effects of power plants in
22 the south bay area.

23 The City of Chula Vista, by the way, has been a
24 member of the Cities for Climate Protection, which I think
25 Mr. Claycomb referred to and a member of the International

1 Council of Local and Environmental Initiatives.

2 And, in fact, two years ago we won an award as
3 one of the top five cities in the northern -- or the
4 Continent for CO2 reduction plans and implementation.

5 What we are concerned about, and I think that Mr.
6 Claycomb's comments refer to it and get at, is the
7 accumulative effects of -- we are very interested and
8 concerned about the energy problems in California and we
9 feel that we are, in fact, doing our fair share. Our
10 counsel has debated long and hard and has gotten closer as
11 recently as last night to working with the local port
12 district and the current operators or future operators to
13 repower the existing power plant, which is about 700
14 megawatts in our city.

15 We have already approved a single peaker plant on
16 main street in the City of about 44 megawatts. There is a
17 proposal to put an additional peaker plant of 64 megawatts
18 in our city, that's before the CEC, I believe, on June
19 11th.

20 There have been, in our air shed, and within
21 direct mile of our city or less, there is two peaker
22 plants at the Larkspur facility that have been approved
23 that can burn on fuel oil or regular oil. There is
24 another, we understand, potential request for two more
25 peaker plants of approximately 90 to 100 megawatts

1 proposed for the same region along with this particular
2 power plant.

3 And our concern is that combined with -- by the
4 way, the plants that I believe that the Committee is aware
5 of that are being proposed for Mexico, and the gas
6 pipeline that has already been approved federally to go
7 from Texas to Mexico will fire up at least two, and maybe
8 a third power plant. Our concern is about the cumulative
9 effects that I believe Mr. Claycomb has referenced a
10 number of times in his comments, and that what appears to
11 be an approval of the site on a site by site basis without
12 considering those cumulative effects as well as the
13 environmental justice issues.

14 I understand that the Governor, in the CEC
15 rather, has established a Committee on Environmental
16 Justice. We've gone on line and established ourselves as
17 a participant in that, and haven't heard any feedback
18 about whether on not this project and the other projects
19 that have gone before us and are coming before us are
20 being considered by that Committee.

21 We have faxed a letter to the advisor and would
22 like to enter that letter into the record which
23 essentially demonstrates those concerns. We also applaud
24 PG&E and their partners for the attempt at mitigation, and
25 I don't know if the Committee is aware of this or not. In

1 addition to the comments the City made about mobile
2 credits and transmission lines in Chula Vista, we have a
3 bit of a concern that the final outcome of those mobile
4 emission credits while a tremendous, you know, attempt at
5 a new program and a positive thing for the County of San
6 Diego, approximately 85 percent of the trash trucks that
7 will be converted from diesel to liquid natural gas or
8 compressed natural gas will operate in the eastern and
9 southern and northern part of the county.

10 They will not operate -- only about 15 percent
11 operate in the affected area and none of them will operate
12 in Chula Vista. Chula Vista is the second largest city in
13 San Diego county with about 182,000 people, the closest
14 major population to the proposed power plant.

15 And because of the lack of information about
16 cumulative effects and this power plant's addition to the
17 steam power plant and the peakers that have been built or
18 are in the process of being built, we have supported Mr.
19 Claycomb and his comments.

20 CHAIRPERSON KEESE: Thank you, Mr. Meacham.
21 Anyone else on the phone?

22 MR. CLAYCOMB: One more comment, Claycomb would
23 like to make is that we have greatly reduced where we
24 originally proposed to mitigate the emissions of all that
25 carbon dioxide and its effect on public health.

1 We originally proposed spending 80 percent of the
2 cost of the power plant, which would be something around
3 ten million. We have finally reduced that, and this is in
4 writing, you have a copy of it, to three million. And the
5 best we've been offered was \$300,000, and that's just not
6 acceptable.

7 CHAIRPERSON KEESE: Thank you, Mr. Claycomb.

8 MS. DUNCAN: This is Holly Duncan. I would like
9 to add to that statement that there is an excellent study
10 out currently that shows --

11 CHAIRPERSON KEESE: Ms. Duncan.

12 MS. DUNCAN: -- that if we covered just 80
13 percent of the existing roof tops in San Diego county with
14 solar, we would meet the entire county's need in a clean
15 and environmentally responsible way.

16 CHAIRPERSON KEESE: Thank you, Ms. Duncan.

17 Mike Boyd, we'll give you a couple of minutes.

18 MR. BOYD: Mike Boyd. Thank you, Mr. Chairman
19 and Commissioners. I'm Mike Boyd. I'm the president of
20 the Californians for Renewable Energy, CARE.

21 I just became aware of this item being on your
22 agenda today. I was on the list server for this project,
23 and I'm concerned that this notice wasn't mailed at least
24 ten days in advance of this meeting. And if that's the
25 case, I believe that this is a violation of the

1 Bagley-Keene Open Meeting Act.

2 In any case, whether this is a legal proceeding
3 or not, I just would like to voice CARE'S objections to
4 this project. Originally, it is our understanding that
5 this project proposed to use SCO-NOx emission control
6 technology. And it's our understanding that since there
7 is a new owner, Calpine, that they've backed away from
8 their commitment to installing that emission control
9 technology, which would do much to eliminate carbon
10 monoxide emissions from this project.

11 So just for the record, we object,

12 Thank you.

13 CHAIRPERSON KEESE: Thank you.

14 MS. SEGNER: This is Sharon Segner with PG&E
15 Nation Energy Group --

16 CHAIRPERSON KEESE: Ms. Segner, we're going to
17 hear from Mr. Chapman.

18 MS. SEGNER: Oh, thank you. I'm sorry.

19 CHAIRPERSON KEESE: I'm sorry. Did I -- I'm
20 sorry, we're going to hear from Mr. Carroll.

21 MS. SEGNER: Great, thank you.

22 MR. CARROLL: Thank you. Good morning. My name
23 is Mike Carroll. I'm with Latham and Watkins. And I'm
24 here on behalf of PG&E Energy Group.

25 Throughout these proceedings, Mr. Claycomb has

1 very ardently promoted the use of renewable technologies,
2 specifically photovoltaic technologies as an alternative
3 to fossil fuel generation.

4 A substantial amount of time was devoted during
5 the proceedings to consideration of the issues raised by
6 Mr. Claycomb. For example, staff Exhibit 74, which is
7 included in the record, includes an analysis of
8 photovoltaic technology as an alternative to the project.

9 CEC staff expert Mr. Arthur Zalinsky provided
10 additional testimony on this topic during evidentiary
11 hearings on November 13th. Mr. Claycomb's cross
12 examination of Mr. Salinsky on this issue fills a full 13
13 pages of the transcript of the hearing on that date on
14 November 13th.

15 The PMPD included a discussion of the alternative
16 technologies analyzed during the proceedings including
17 photovoltaic technology at page 25. In a response to
18 comments by Mr. Claycomb on the PMPD, an errata to the
19 PMPD was issued on April 17th to clarify points made by
20 Mr. Claycomb during the proceedings.

21 The final decision of the Commission includes
22 extensive analysis of Mr. Claycomb's proposal at pages 26
23 through 28. The decision also includes a very specific
24 finding, finding number four in the alternatives section,
25 concluding that Mr. Claycomb's proposal is not a viable

1 alternative to the proposed project as it fails to meet
2 the project objectives.

3 Thus Mr. Claycomb has been provided ample
4 opportunity to make his points during these proceedings
5 and he has done so. It is clear that the staff and the
6 Commission and the Committee have responded to Mr.
7 Claycomb. And the final decision reflects careful
8 consideration of the issues that he's raised.

9 A mandate of CEQA and this Commission's siting
10 regulations that a reasonable range of alternatives to the
11 project be considered has thus been fulfilled. We
12 certainly respect Mr. Claycomb's passion for renewable
13 technologies. It's a passion that PG&E National Energy
14 Group shares, and we invest very heavily in renewable
15 technologies. This is not a renewable technology project.

16 Our energy needs demand a mix of technology
17 including clean, efficient fossil fuel technology such as
18 the Otay Mesa project. And on that basis we respectfully
19 request that the petition be denied.

20 With respect to the comments from the City of
21 Chula Vista, I don't know if Mr. Meacham participated in
22 any of the proceedings up until this date. If he had or
23 if he did he would know that the issues of cumulative
24 impacts and the other matters that he raised in his
25 comments were exhaustively addressed. And I can't cite to

1 the specific parts in the record right now, but I'd be
2 happy to do that with him after the hearings.

3 Thank you.

4 CHAIRPERSON KEESE: Thank you. Is there anyone
5 else in the audience who cares to speak to this issue?

6 Seeing none --

7 MR. MEACHAM: This is Michael Meacham of Chula
8 Vista --

9 CHAIRPERSON KEESE: Pardon?

10 MR. MEACHAM: Michael Meacham with the City of
11 Chula Vista, if I may?

12 CHAIRPERSON KEESE: No. Actually, you testified
13 earlier. You had an offer there to work together and I
14 would -- if you were here, I would suggest that after the
15 hearing that you talk to Mr. Carroll, but testimony is
16 over.

17 Do we have a motion?

18 CHIEF COUNSEL CHAMBERLAIN: Mr. Chairman.

19 CHAIRPERSON KEESE: Mr. Chamberlain.

20 CHIEF COUNSEL CHAMBERLAIN: Yes, with respect to
21 the Bagley-Keene point that was raised, I do understand --
22 I believe that the notice for this particular item was
23 mailed out after the ten day window. However, under the
24 Bagley-Keene Act, Section 11125.3(a)(2), if by a
25 two-thirds vote of the State body, that is the Commission,

1 determines that there's a need to take immediate action
2 and that the need for that action came to the attention of
3 the State Body subsequent to the agenda being posted as
4 specified in the normal process, then the Commission can
5 take this matter up.

6 It's my understanding that perhaps the
7 representative of PG&E National can confirm this, that
8 there is a sale pending, and that this matter needs to be
9 dealt with today in order to allow that sail to happen in
10 a timely manner; is that correct?

11 MR. CARROLL: It is true that there is a sale
12 pending of the project, which was scheduled to close last
13 week. That closing has been postponed as a result of the
14 petition being filed by Save Our Bay and Mr. Claycomb.

15 COMMISSIONER LAURIE: Mr. Chamberlain, did this
16 information come to the Commission's attention before the
17 agenda was published?

18 CHIEF COUNSEL CHAMBERLAIN: Yes.

19 COMMISSIONER LAURIE: Mr. Chairman, under the
20 section cited by General Counsel, I would move to accept
21 this item as a matter properly to be heard on this date.

22 COMMISSIONER ROSENFELD: Second.

23 CHAIRPERSON KEESE: Motion by Commissioner
24 Laurie, second by Commissioner Rosenfeld.

25 All in favor?

1 (Ayes.)

2 CHAIRPERSON KEESE: Opposed?

3 Adopted five to nothing.

4 We have before us the petition for

5 reconsideration. Is there a motion?

6 COMMISSIONER MOORE: Mr. Chairman, given the
7 facts and the testimony that we've heard and the actions
8 that were reported back out to us by committee, I move to
9 deny the petition.

10 CHAIRPERSON KEESE: Motion by Commissioner Moore.

11 COMMISSIONER PERNELL: Second.

12 CHAIRPERSON KEESE: Second by Commissioner
13 Pernell.

14 All in favor?

15 (Ayes.)

16 CHAIRPERSON KEESE: Opposed?

17 Adopted five to nothing.

18 CHAIRPERSON KEESE: Thank you.

19 MR. CARROLL: Thank you.

20 CHAIRPERSON KEESE: We will now proceed to --

21 MR. CLAYCOMB: God have mercy on your souls.

22 CHAIRPERSON KEESE: Thank you.

23 We will now proceed to Item 2, Metcalf Energy
24 Center. Commission consideration of appeal of Committee
25 ruling to denying CARE's motion to deny AFC.

1 MR. CLAYCOMB: Mr. Claycomb of Save Our Bay Inc.
2 abandoning this discussion.

3 CHAIRPERSON KEESE: Thank you.

4 MR. BOYD: Are we ready?

5 CHAIRPERSON KEESE: We're ready.

6 MR. BOYD: Once again, I'm Mike Boyd. I'm the
7 President of Californians for Renewable Energy. And we
8 basically filed a petition appealing the Metcalf committee
9 decision denying our request to deny the AFC, because of
10 the incontrovertible evidence of prejudice on the part of
11 the Commission and its staff.

12 First, let's talk about the futility without
13 abandoning hope.

14 (Thereupon an overhead presentation was
15 presented as follows.)

16 MR. BOYD: We know your minds are already made
17 up. We know you're going to override the city and approve
18 this project. We know you're going to do this, because
19 we've been told -- you've been told to expedite at all
20 costs and to make how fast a plant can get on line the
21 sole criterion for approval.

22 We know you're going to summarily reject our
23 comments or simply ignore them as you and your committees
24 and your staff have done so so many times before. We know
25 you want to give us the resources or the help to engage in

1 well-informed and meaningful public participation.

2 --o0o--

3 MR. BOYD: These proceedings are not in
4 accordance with the law. These proceedings are void from
5 the very beginning, but we're not giving up hope.
6 Miracles can happen and we hope and pray that one will and
7 you'll see the light.

8 Stop the process now.

9 If the applicant still wants to go back and do it
10 right, one way of doing it right is to convince the
11 applicant to put the project on one of the feasible and
12 ecologically superior sites staff identified.

13 --o0o--

14 MR. BOYD: Answer these simple questions. How
15 can you review a project aimed at helping to deal with the
16 California energy crisis without even addressing that
17 condition?

18 How can you consider approving a project allowing
19 hundreds of millions of dollars to be spent on a plant
20 that operates on natural gas without even considering the
21 present status of natural availability?

22 --o0o--

23 MR. BOYD: Where is the answer to the evidence we
24 presented about the intimidation and harassment of staff
25 members who refused to go along with the program by

1 ignoring CEQA and the environmental review provisions of
2 the Warren Alquist Act and other LORS in using how fast
3 the plant can get on line as the sole criterion?

4 Where is your concern about the integrity of the
5 process?

6 Why don't you let the staff people we've
7 identified testify?

8 --o0o--

9 MR. BOYD: This brings up our request for
10 subpoena to get witnesses to appear on the staff
11 harassment issues as well as our request to have staff
12 people testify?

13 Why don't you comply with your request?

14 Aren't you concerned that these kinds of things
15 are going on?

16 Don't you recognize that fair and full resolution
17 of these questions is vital to the integrity of your
18 process?

19 How can you stand by and let these kinds of
20 things go on?

21 --o0o--

22 MR. BOYD: Why don't you have the parties get
23 together and select an acceptable neutral body to
24 investigate these matters, given staff's position on
25 prematurity.

1 power plants?

2 Why haven't you told the Governor that he just
3 doesn't have the power to ask you to amend environmental
4 LORS by expediting the criterion?

5 --o0o--

6 MR. BOYD: That's it.

7 Basically, I request that you deny this project
8 based on the --

9 CHAIRPERSON KEESE: The project is not before us.

10 MR. BOYD: -- or consider or other questions, and
11 now I'm done.

12 CHAIRPERSON KEESE: Thank you. What's before us
13 is the fact that there was a motion to deny the AFC for
14 the Metcalf Energy Center for incontrovertible evidence of
15 prejudice by the Commission and its staff.

16 That motion was denied on April 15th to 2001 by
17 the Committee, which you have brought before us, you have
18 appealed that decision.

19 MR. BOYD: That's correct.

20 CHAIRPERSON KEESE: The Metcalf case is not in
21 front of us. That issue is.

22 MR. BOYD: The Metcalf case what?

23 CHAIRPERSON KEESE: Whether we're approving
24 Metcalf or not is not before us. What I have just read is
25 what is before the Commission at this time. This is not a

1 vote on the Metcalf project.

2 MR. BOYD: I don't quite follow.

3 CHAIRPERSON KEESE: Do we have anyone else who
4 cares to speak to this motion?

5 MS. DUNCAN: Holly Duncan, Intervenor for Otay
6 Mesa, I support the motion.

7 CHAIRPERSON KEESE: Thank you.

8 MR. BOYD: Thank you.

9 CHAIRPERSON KEESE: And recognize we're speaking
10 to the motion to deny the AFC, so if you could stick to
11 the motion to deny the AFC, that would be great.

12 MS. CORD: Is this on?

13 CHAIRPERSON KEESE: Yes, it is. You have to get
14 real close to it though.

15 MS. CORD: Well, I don't have to.

16 Thank you, Commissioner Keese, Commissioner
17 Laurie, Commissioners. I'm Elizabeth Cord. I'm here
18 today representing Intervenor Santa Teresa Citizens Action
19 Group. These are two of my children who are with me
20 today. We represent the thousands who oppose the Metcalf
21 Energy Center project proposed for San Jose.

22 The Santa Teresa Citizens Action Group decries
23 the lack of independent review associated with the Metcalf
24 project as evidenced in the recently concluded evidentiary
25 hearings, and especially with respect to the Metcalf files

1 which are hundreds of pages of internal CEC staff
2 documents obtained through the California Public Records
3 Act by an Intervenor in the Metcalf proceedings.

4 We have testimony in these evidentiary hearings
5 from five nationally renowned professors from the US Naval
6 Post Graduate School in Monterey that the CEC staff
7 testimony in air quality was totally lacking in validity
8 and accuracy.

9 This is a quote from the five professors. "The
10 Energy Commission staff appears to lack the knowledge to
11 assess the meteorological and climate conditions resulting
12 in misleading and even wrong conclusions," unquote.

13 The marginalization of the noise expert testimony
14 prepared by Mr. Kisabuli, who was removed from the Metcalf
15 Case for refusing to change his testimony to favor the
16 applicant is also extremely troubling.

17 As citizens, taxpayers and utility rate payers of
18 the State of California, we are also appalled at the
19 actions of CEC staff attorneys in substantively changing
20 and rewriting expert testimony regarding alternate sites.
21 Staff attorneys Ratliff and Ichien together submitted over
22 ten pages of changes to the alternate site testimony
23 prepared by the CEC staff expert on alternate sites in the
24 Metcalf case.

25 This alternate site testimony substantively

1 altered by attorneys Ratliff and Ichien was then submitted
2 as and purported to be the expert testimony of Mr. Gary
3 Walker. In addition to submitting testimony under a name
4 not belonging to either of them, staff attorneys Ratliff
5 and Ichien are not qualified in the Metcalf proceedings as
6 experts in alternate sites.

7 There is no testimony that attorneys Ratliff
8 and/or Ichien ever conducted site visits, researched local
9 LORS or participated in any data collection or analysis.
10 They seem to have simply taken it upon themselves to
11 rewrite the testimony of their own expert who is qualified
12 in alternate sites.

13 Regarding Walker's unedited testimony, attorney
14 Ichien states, and this is a quote, "Staff is building a
15 strong case for finding the alternate sites feasible."

16 Attorney Ratliff puts it another way quote, "Such
17 override findings cannot be made under CEQA in these
18 circumstances. The only possible result is for the agency
19 to deny the permit," unquote.

20 If the testimony prepared by highly educated,
21 trained, experienced and duly qualified CEC expert Mr.
22 Gary Walker after extensive research and analysis did not
23 support override, the only appropriate action for
24 attorneys Ratliff and Ichien to undertake would have been
25 to prepare their briefs concluding that override was not

1 supported.

2 For them to undertake to change staff expert
3 testimony to favor the applicant has completely undermined
4 the validity and integrity of the review process. Their
5 input should have been limited to legal issues, which they
6 have already stated, and, again, alternate sites are
7 feasible according to Ichien and override findings cannot
8 be made according to Ratliff.

9 They overstepped their limited authority. As far
10 as we know, attorneys Ratliff and Ichien are not
11 Commissioners yet.

12 Not only did a feasible alternative site exist
13 but, in fact, multiple feasible alternative sites exist.
14 Four alternate sites identified by CEC staff are
15 considered preferable to the proposed Metcalf site and two
16 of these sites are considered environmentally superior.

17 CEC attorneys have concealed and distorted the
18 findings of their own highly qualified and experienced
19 experts. Mr. Walker's resume shows extensive experience
20 and education including multiple advanced degrees.
21 Additionally, Mr. Walker was qualified in these
22 proceedings as an expert. The attorneys were not.

23 In terms of the electrical grid, ISO staff finds
24 alternates 1, 2, 3 and 4 substantially better to somewhat
25 better than a proposed site in all system measures,

1 including system losses, outage related overloads, outage
2 related voltage drop, VAR support, RMR transmission line
3 losses, and overall system performance impacts.

4 Alternate sites identified near Fremont or Los
5 Esteros substations would improve outage related
6 overloads, compared to the proposed project site.

7 CHAIRPERSON KEESE: Ms. Cord, again, the decision
8 on Metcalf is not out yet, if that's what you're
9 discussing. I think the Commission is interested in
10 support of a motion to deny the application for
11 certification, which was denied by the Committee. And the
12 Commission needs information as to why they should
13 overturn that decision.

14 MS. CORD: I think we're talking about whether
15 the staff was being objective or not.

16 CHAIRPERSON KEESE: Staff is a party to this just
17 as you are.

18 MS. CORD: I understand that. I don't think the
19 staff attorneys were qualified as experts in alternate
20 sites. If I'm mistaken, you can show that to me later.
21 But are you taking this off my time?

22 CHAIRPERSON KEESE: I'm suggesting that what
23 we're dealing with is the motion to deny the AFC, but go
24 ahead.

25 MS. CORD: Thank you.

1 Outage related voltage drop the same or better at
2 Alts 1, 2, 3 and 4 than the proposed project site, no
3 benefit to VAR and RMR support associated with the
4 proposed project site, overall system performance impact
5 better at all four alternates compared to the proposed
6 project site.

7 Using any of the alternate sites would capture
8 substantially greater transmission line loss reductions
9 than proposed project site. Annual energy savings in
10 excess of \$3 million more than Metcalf, if Alternates 1, 2
11 3 or 4 were utilized.

12 The analysis reveals that use of sites 1, 2, 3
13 and 4 were better than or essentially the same as the
14 proposed project for each of the performance measures and
15 somewhat better overall.

16 Alts 1 through 4 meet the project objectives of
17 providing bay area electrical grid reliability benefit,
18 mitigating transmission congestion and also meet the
19 project objective to be on line as soon as possible
20 particularly given the highly uncertain future of the
21 Metcalf project even if it were to be certified.

22 ISO expert testimony preferred all of alternate
23 sites 1, 2, 3 and 4 over Metcalf. Alternate sites 3 and 4
24 are found by CEC staff to avoid all significant impacts
25 associated with the proposed project site.

1 Four separate feasible alternate sites exist.
2 Staff identified Alts 1, 2, 3 and 4 are available for
3 development, all meet local LORS, all are environmentally
4 preferable and better for grid reliability, all four are
5 preferred for grid benefits by the ISO. Two alternate
6 sites are environmentally superior and substantially
7 better for grid reliability.

8 Staff expert concludes that all of Alts 1, 2, 3
9 and 4 would avoid or substantially reduce one or more
10 significant impacts of the proposed project without
11 creating any new significant impacts. The existence of
12 feasible alternatives that mitigate one or more
13 significant impacts without creating any new significant
14 impacts disqualify the project for approval under the
15 California Environmental Quality Act and disallow override
16 under Warren Alquist.

17 A massive overhaul of the CEC staff processes is
18 indicated. At the very least, the CEC seems to have far
19 too many attorneys being supported at taxpayer expense for
20 acting contrary to the public interest.

21 The executive summary of the Metcalf FSA
22 systematically contradicts and falsely portrays staff
23 analysis. The executive --

24 CHAIRPERSON KEESE: That's not before us. I
25 mean, this is maybe appropriate conversation if we're

1 considering the Metcalf project. What we are considering
2 is the motion to deny the AFC.

3 MS. CORD: And what is that motion to deny based
4 on, could you refresh my memory?

5 CHAIRPERSON KEESE: It's based, as I recall, on
6 the San Jose Mercury news article of April 15th.

7 MS. CORD: And what was that article about? Is
8 that about CEC staff attorneys changing --

9 CHAIRPERSON KEESE: Correct.

10 MS. CORD: Can we talk about what they changed,
11 am I allowed to talk about that?

12 CHAIRPERSON KEESE: You have referenced some of
13 that.

14 MS. CORD: Thank you.

15 CHAIRPERSON KEESE: But you've been talking about
16 why we should deny the project, why we should --

17 MS. CORD: No I'm talking about what things the
18 staff attorneys changed.

19 CHAIRPERSON KEESE: This is a procedural motion
20 in front of us and you've just about exhausted time, if
21 you haven't.

22 MS. CORD: Is someone timing?

23 CHAIRPERSON KEESE: Yes, we're going -- we've
24 been very generous.

25 MS. CORD: So you're going to start timing now?

1 CHAIRPERSON KEESE: We gave the previous speaker
2 five minutes. We've given you about 15.

3 MS. CORD: Fifteen minutes?

4 CHAIRPERSON KEESE: You have been on about 15
5 minutes.

6 MS. CORD: Thank you. I'll wrap it up.

7 CHAIRPERSON KEESE: Well, relevant to the motion
8 to deny the AFC, denial of the AFC.

9 Why should we do that?

10 MS. CORD: You should do that because
11 deliberately mischaracterizing sworn testimony and
12 changing documents to favor the applicant when the weight
13 of the evidence in the case does not support such a
14 conclusion qualifies as deceptive.

15 Specifically favoring an applicant and a project
16 with multiple fatal flaws not only subverts the so-called
17 CEQA equivalent process the Energy Commission claims to
18 have, but also has produced a document that is not an EIR
19 equivalent, does not rise to meet minimum CEQA standards
20 and clearly demonstrates the total absence of independent
21 review in this case.

22 Intervenors have spent over two years
23 participating in the Metcalf process at the cost of
24 thousands of hours of personal and family time sacrificed
25 in order to bring forward facts, evidence and data not

1 revealed by the Energy Commission.

2 Irreparable harm has been done to these diligent
3 members of the public who have performed their civic duty
4 and participated in this process in good faith only to
5 discover through internal documents that the process is
6 being secretly subverted from within the agency entrusted
7 to serve the public good and perform an independent
8 review.

9 Clearly, the CEC has failed its mission and has
10 seriously compromised the public trust. The conclusions,
11 and recommendations reached by CEC attorneys were not
12 expert testimony, were not objective and were contrary to
13 the public interest by seeking to suppress or change
14 evidence that did not favor applicant. The only remedy
15 available is to deny the AFC.

16 Thank you.

17 CHAIRPERSON KEESE: Thank you, Ms. Cord. Thank
18 you, Cord family.

19 Mr. Ajlouny.

20 MR. AJLOUNY: Commissioners, good morning. And
21 it's Mr. Ajlouny. And I guess being part of the process
22 for two years now, I'm getting a clear picture that maybe
23 as intervenors and not lawyers we didn't use the proper
24 words in denying the AFC and going under those borders,
25 that's probably an easy legal decision for you today,

1 because it might seem unreasonable to deny the AFC when
2 your own staff is really at fault.

3 So maybe we didn't use the right words, but you
4 five Commissioners have the responsibility of representing
5 the people. So excuse us for not using the correct words,
6 but the fact is your own staff has a fraudulent FSA. And,
7 it's not my words, it's your own staff's words and their
8 Emails and internal documents. That's a serious issue and
9 you need to deal with it, and that's why I'm here today.

10 So if we didn't come out with the correct word
11 and you can just go off and blow us off and say we can't
12 deny the AFC, so be it, but you should from this
13 demonstration of the documents, which I'm wondering if any
14 of the Commissioners took the time to read the 58 pages.
15 I heard some Commissioners didn't even get a chance to see
16 them. I don't know if I can interact with Commissioners.
17 Did you have a chance to see the 58 pages?

18 CHAIRPERSON KEESE: You can't interact, unless
19 the Commissioners choose to.

20 MR. AJLOUNY: What's that?

21 CHAIRPERSON KEESE: Commissioners can choose to
22 ask you questions, but, no, you're testifying.

23 MR. AJLOUNY: Well, I'm giving them the
24 opportunity to respond to me. If anyone has the courage
25 to say whether they are able to --

1 CHAIRPERSON KEESE: Let's not -- that's not a
2 correct characterization, Issa.

3 MR. AJLOUNY: Okay, I guess we're not always
4 correct, I guess.

5 The FSA has not represented the people. It's
6 your job to represent the people. I'm not going to go
7 over all the details. It's all in the 58 pages, plus the
8 one page from Kisabuli stating what happened to him about
9 politically being pressured to change his testimony,
10 refused to and now is no longer working for the
11 Commission.

12 I urge you to ask those people that are part of
13 those documents to come under oath and ask them and do
14 your own investigation of what went on with the FSA. For
15 you to make a wise and correct decision on this
16 application, you need to have a correct and nonbiased
17 document.

18 Throughout the process, especially Commissioner
19 Laurie, has said political pressure has no part in this
20 process, and he's not influenced by that. I think we all
21 can say there is an enormous political pressure, and
22 that's hard to believe, Commissioner Laurie, as much as I
23 respect you, I just can't believe that Governor Davis
24 coming out in favor of this project has no bearing on your
25 decision.

1 COMMISSIONER LAURIE: You don't know me very
2 well, do you.

3 (Laughter.)

4 MR. AJLOUNY: I don't maybe know you good enough,
5 but I know enough people within the city and all around
6 and how all the back talk and the back room meetings going
7 on and waiting for the city to go forward and say, yeah,
8 we accept this project, so you can go through and do what
9 you have to do as your overrides and everything else.

10 So I won't get into detail, because I don't have
11 written documents. I'm only here on the written
12 documents, not Issa's documents, not the Santa Teresa's
13 Action Group documents, who represents thousands of
14 people, not CARE's documents, but your own staff's
15 documents. You need to deal with it.

16 And just real quick, ISO states that those
17 alternate sites are better as far as the grid. Alternate
18 sites are environmentally superior. And I'm only
19 mentioning these not fighting the Metcalf project, again,
20 pointing out the things that were not in the FSA, but were
21 in the internal documents.

22 Noise, the letter from Kisabuli. Water, you have
23 testimony on water in the hearing stating about not
24 letting groundbreaking happen, that's in the opening
25 briefs agreeing with that. And then all of a sudden, the

1 reply brief, as long as we're talking about it, we're
2 allowed breaking of ground. I mean your own lawyers that
3 present your briefs and opening briefs and reply briefs
4 are contradicting their own opening briefs and the
5 hearings. I mean that's incredible.

6 I guess I'm just going to encourage you to ask
7 your own staff. If we missed the mark on the actual
8 hearing here or the actual motion, then let us know where
9 we have to go or maybe you can be credible enough,
10 Commissioner Keese, to say, yeah, maybe it warrants an
11 investigation of your own before you come out with your
12 first opinion of the Metcalf project should go in.

13 CHAIRPERSON KEESE: Some of this testimony is a
14 little premature, because the Committee has not issued its
15 ruling as of this moment. As you know, in one regard,
16 staff is independent from the Commission during these
17 proceedings. So staff and the people that staff work for
18 are here in this room and have heard what you've said.

19 But neither Commissioner Laurie or I, as sitting
20 on the Committee, could discuss these issues with staff.
21 We get at the hearing what is presented to us by you, what
22 is presented to us by staff. After the proceeding is
23 over, perhaps we can talk about these issues.

24 But staff is an independent party just as you
25 are, so it's out of our hands.

1 MR. AJLOUNY: Well, that's the point I'm trying
2 to make, Commissioner, is that these are the things that
3 we were able to expose.

4 CHAIRPERSON KEESE: You have made that point the
5 people that staff works for. So if you're hoping your
6 point is heard, it has been heard by people who can deal
7 with it.

8 MR. AJLOUNY: But throughout the whole process,
9 Commissioner. In all due respect, we've been told that
10 the CEC staff is going to represent the people and bring
11 out all the concerns. If we weren't here as Intervenors,
12 I've been reassured that the same issues would have been
13 brought forward.

14 Okay, but what we've exposed, through the Public
15 Records Act, I'm the one that put it in, it said these are
16 the things we're trying to hide, A, B, C. Don't you think
17 it's the responsibility of the Commissioners to look into
18 those documents to see what's going on.

19 Again, we might have missed the mark on the
20 actual motion, and so be it, but I hope you're man enough
21 to represent the people and their health and deal with an
22 accurate document. And these are the things that we know
23 about. There's probably tons more that we don't, but of
24 course I was cut out by Mr. Richins, that I couldn't even
25 talk to any of the staff months ago.

1 I mean by name in an Email, don't talk to Issa,
2 and I'm an intervenor.

3 Thank you.

4 CHAIRPERSON KEESE: Thank you, Issa.

5 Those were the names of the witnesses I had on
6 this. Do we have staff?

7 STAFF COUNSEL WILLIS: Thank you. Chairman Keese
8 and Commissioners, I'm Kerry Willis. I'm staff counsel
9 along with Dick Ratliff have represented the staff
10 throughout the Metcalf proceedings.

11 We filed written brief comments yesterday, and I
12 believe you have those before you. The Administrative
13 Procedures Act includes a federal due process component.
14 Section 11425.10 of the Government Code enumerates some of
15 the requirements of decisions that involve adjudication of
16 issues of fact. These rights include that the decision be
17 in writing, be based on the record and include a statement
18 of a factual and legal basis of the decision.

19 To decide the Metcalf AFC now based on the merits
20 would be premature and in violation of the statute and the
21 applicant's constitutional due process rights. Staff has
22 participated in at least 40 publicly noticed meetings,
23 workshops and hearings based on this project alone.

24 The public, all parties and interested agencies
25 have had ample opportunity to participate in these

1 proceedings. The Committee is currently drafting its PMPD
2 based on the extensive hearing record. It would be
3 premature to make any decision on the merits of the AFC
4 before this document is issued, and I understand there
5 will be hearings after the document is issued for more
6 public comment and more comments by the intervenors.

7 For these reasons staff recommends that CARE's
8 motion be denied.

9 And I think Mr. Ratliff had some comments.

10 STAFF COUNSEL RATLIFF: Commissioner, in addition
11 to those comments, I just wanted to address the statements
12 that have been made today about the staff counsels' role
13 in this case, which I think are very serious statements
14 that should not go unanswered.

15 I did not --

16 CHAIRPERSON KEESE: Briefly, Mr. Ratliff, because
17 recognizing that the Committee, I don't believe, can deal
18 with those issues, and I'm not sure that the Commission
19 can deal with those issues, prematurely. So I understand
20 your --

21 STAFF COUNSEL RATLIFF: I'm not asking you to
22 deal with the issue.

23 CHAIRPERSON KEESE: Brief response.

24 STAFF COUNSEL RATLIFF: I just wanted a brief
25 response here to say that had I written the alternate's

1 testimony myself, it would have read quite differently, I
2 can assure you, than it does. Neither Ms. Ichien nor
3 myself, in fact, made any written contribution to that
4 testimony. And I think that's evidenced by the fact that
5 that testimony is championed by the Intervenors even
6 today.

7 What I did do, I think is a matter of public
8 record, because we disclosed all of the documents that
9 went into the review process for that testimony. And I
10 think if any of you have any real concern about what
11 actually occurred, you will find, if you look at those
12 documents, exactly what did occur. And it was not, and I
13 emphasize, it was not pressure or efforts to, in fact,
14 subvert the testimony of the witness.

15 The witness testified to that testimony,
16 testified to it honestly and said it was his testimony.
17 So I assure you that those comments simply are baseless.

18 CHAIRPERSON KEESE: Thank you.

19 Commissioners, we have it in front of us.

20 COMMISSIONER PERNELL: Mr. Chairman, just
21 speaking on the testimony that I've heard, there has been
22 allegations that staff has done something improper. We
23 don't know that. I would ask the Executive Director to
24 have a closed session so we can be briefed on whatever it
25 is that -- whether they have some legitimate concerns or

1 whether they're not legitimate. At this point, at least
2 from my standpoint, I'm not that familiar with all of the
3 circumstances of the case, so because these are
4 allegations on staff, it would have to be in a closed
5 session, I understand, for us to even begin to discuss
6 this. So I don't want to begin to discuss it here and be
7 in some type of a violation. I would just ask that we
8 have a closed session, at some point, to brief the other
9 Commissioners on the allegations that are being made.

10 We can't, I don't think, that we as a Commission
11 can just dismiss those without some type of internal
12 review.

13 CHAIRPERSON KEESE: Mr. Larson.

14 EXECUTIVE DIRECTOR LARSON: Mr. Chairman, we'll
15 be glad to accommodate the Commission on this.

16 CHAIRPERSON KEESE: I think at the appropriate
17 time.

18 EXECUTIVE DIRECTOR LARSON: We'll do it very
19 quickly.

20 CHAIRPERSON KEESE: Mr. Chamberlain, I'm
21 concerned about the preserving the role of the Committee
22 and staff as an independent party here.

23 CHIEF COUNSEL CHAMBERLAIN: I think, yes, I
24 believe that what you're suggesting is correct, and that
25 is that it may really be better for the Commission to hear

1 the matter independent of these allegations, hear the
2 allegations, review the documents that are all a matter of
3 public record, and make a decision on the case.

4 And then if there are lingering concerns about
5 whether the staff has properly performed, that could be
6 handled in a closed session on the performance of staff.

7 CHAIRPERSON KEESE: Thank you. Does that --

8 COMMISSIONER PERNELL: That's fine.

9 CHAIRPERSON KEESE: Thank you. Do I have a
10 motion?

11 MS. CORD: Can I make just one comment?

12 CHAIRPERSON KEESE: Well, we're --

13 MR. BOYD: I requested a continuance also. I
14 think that it would be appropriate for you to continue it
15 and have your meeting. And then if you decide to do
16 something in the future, publicly notice it and we'll come
17 back. Why can't you continue it if you say we're being
18 premature or staff is saying we're being premature --

19 COMMISSIONER PERNELL: Mr. Boyd, hold on a
20 second.

21 CHAIRPERSON KEESE: Mr. Boyd, the problem --

22 MR. BOYD: We're trying to comply with the
23 requirements is what I'm trying to say.

24 CHAIRPERSON KEESE: Mr. Boyd, the point that I
25 made that our legal has concurred with, staff is an

1 independent party to this case. We do not talk to staff
2 other than in public meetings like this.

3 MR. BOYD: But once the decision is out --

4 CHAIRPERSON KEESE: You're asking us to --

5 MR. BOYD: But once the decision is out then you
6 can talk, right? Once you make the decision, then it's
7 open.

8 CHAIRPERSON KEESE: Mr. Boyd, you're not --

9 MR. BOYD: Then it's open and we can wait until
10 then.

11 CHAIRPERSON KEESE: And so we're not going to
12 compromise the Committee before the Committee makes a
13 decision in this case.

14 MR. BOYD: I'm not requesting that.

15 CHAIRPERSON KEESE: We're not going to be doing
16 that, so what we have in front of us the motion for --

17 MS. CORD: I just have one brief thing to say, 30
18 seconds.

19 CHAIRPERSON KEESE: We have an appeal of the
20 Committee ruling. Do we have a motion?

21 MS. CORD: You know, he was allowed to comment on
22 what I said.

23 MR. BOYD: I thought you had a motion on the
24 floor already.

25 CHAIRPERSON KEESE: We made a motion that was

1 denied by the Committee. Right now, we have in front of
2 us an appeal.

3 MR. BOYD: You also had a motion from
4 Commissioner Pernell to go into a closed session and
5 discuss it, I thought.

6 CHAIRPERSON KEESE: At some time. And we've
7 concurred with that decision.

8 MS. CORD: Can I make a comment on Commissioner
9 Pernell's --

10 CHAIRPERSON KEESE: No, Ms. Cord.

11 Do we have a motion?

12 COMMISSIONER MOORE: Motion on the AFC?

13 CHAIRPERSON KEESE: Pardon?

14 CHIEF COUNSEL CHAMBERLAIN: This would be a
15 motion on the appeal of the Committee's action on the
16 motion to deny.

17 CHAIRPERSON KEESE: If we hear -- if nothing, it
18 will be summarily gone.

19 Do I hear a motion?

20 There is no motion, that appeal is denied.

21 Item 3.

22 Mirant Delta LLC's. Consideration and Possible
23 Adoption of Presiding Member's Proposed Decision of Contra
24 Costa Unit Number 8.

25 Mr. Shean.

1 Members, you have in front of you --

2 COMMISSIONER MOORE: I passed it out.

3 CHAIRPERSON KEESE: In front of you is Mirant
4 LLC's, what's been distributed.

5 For our benefit, Mr. Shean, have the parties seen
6 this?

7 MR. SHEAN: Yes. Not only have they seen it, I
8 believe, we've worked through the drafts and this draft
9 represents essentially the combined effort of the staff
10 and the applicant and the hearing officer.

11 CHAIRPERSON KEESE: Thank you.

12 MR. SHEAN: Good morning, Mr. Chairman and
13 Commissioners. I'm Garret Shean. I'm the hearing officer
14 on the Contra Costa Unit 8 AFC proceeding.

15 What we have this morning to present to you is
16 the Presiding Member's Proposed Decision for consideration
17 and possible adoption as the Commission's decision.

18 We have the applicant and staff here, as well as
19 Mr. Chapman who represents our principal Intervenor, the
20 Sportsman's Yacht Club. I think what I should indicate --
21 I'm just going to briefly go over this.

22 We've had minor changes that basically don't even
23 rise to the level of a page that's in front of you. Some
24 changes on the visual resources discussion that are before
25 you, and I have just a couple of other comments.

1 What I'd like to indicate this morning is that
2 our Warren Alquist Act process and the CEQA process have
3 worked exceptionally well in this proceeding. Shortly
4 following the issuance of the Staff's Final Assessment in
5 the early spring, we conducted some basically new fangled
6 committee conferences in Contra Costa County. It was
7 fairly clear what the issues in the proceeding were.

8 They were strongly and well advocated by the
9 staff, by Mr. Chapman and by Mr. Varanini and Mr. Mark
10 Parrott and Mr. Tony German on behalf of the applicant.

11 At that point, it appeared that if we could
12 attempt some Alternative Dispute Resolution, it was likely
13 we were going to be able to avoid serious and prolonged
14 litigation in an evidentiary hearing on the proceeding.

15 On the applicant's behalf, -- let me say this on
16 the Intervenor's and the staff's behalf, it appeared that
17 movement of the project on the property already owned by
18 the applicant would either reduce or eliminate potential
19 visual and noise and associated impacts to the neighboring
20 Sportsman's Yacht Club. The principal interest of the
21 applicant at this point, was that we were nearing the
22 final quarter of our 12-month statutory process.

23 And so long as that process schedule could be
24 maintained, it would entertain a project modification. In
25 fact, the applicant did come back with a, what it has

1 called, a project enhancement. It has moved the location
2 of the power plant approximately, I think it's on the
3 order of 250 feet or so south of its originally proposed
4 location. And by doing so, it has either eliminated or
5 substantially reduced the impacts to the Sportman's Yacht
6 Club.

7 As a result, the evidentiary hearings of the
8 proceeding went from probably what would have been a
9 matter of a week or more to an afternoon. And the case
10 now is largely uncontested.

11 The minor changes that we have for you today
12 relative to the Presiding Member's Proposed Decision
13 mostly reflect the change in the verification and lead
14 times, those dates that are either 90 60, or 30 days,
15 basically reducing those so that the applicant can, at its
16 earliest convenience following the certification, if it
17 occurs, commence construction of the project.

18 With regard to the visual resources, there has
19 been an issue that has lasted through the proceeding with
20 respect to the visual impact of cooling tower plumes. I
21 should indicate that this project is unique in that it
22 utilizes water from the discharge of units 6 and 7 at the
23 existing facility for the cooling of this Unit 8.

24 And what it will do in order to assure that the
25 return water to the San Joaquin River is not thermally

1 elevated above what it currently is, the project will
2 employ the cooling tower to reduce the temperatures of the
3 cooling water as it comes from unit 8, so that when it is
4 reintroduced to the discharge or outlet to Units 6 and 7,
5 it returns to the river essentially at the same
6 temperature or with a very small bump up.

7 This is environmentally advantageous, something
8 that the staff and the Committee concur is the appropriate
9 thing to do, but there was a question of whether or not
10 the use of cooling towers was going to cause a cooling
11 tower plume that could be visually objectionable if it
12 became significant.

13 The key to the size of the cooling tower plume is
14 the flow rate through the cooling tower. Once it was
15 determined that the flow rates were not going to be as low
16 as feared by staff, it appeared that the thing for the
17 Committee to do was to restate in the proposed decision in
18 a clearer manner that by designing the cooling tower for a
19 7,500 kilogram per second flow rate, that that would
20 produce a plume, that under the meteorological conditions
21 during the winter clear days, high humidity, which was
22 likely to create the worst case plume, would in all
23 likelihood not be the severe worst case significant impact
24 that it was feared.

25 Thus, conditioning of the certification that the

1 design of the cooling tower be at that 7,500 kilogram per
2 second flow rate, I think we have satisfied the staff, Mr.
3 Chapman and the Committee that the potential for
4 significant -- or the potential for an adverse visual
5 impact due to the plume is now insignificant.

6 There was also an issue raised by the parties,
7 anecdotally in the local area, about ground level plumes
8 that have occurred with another unrelated facility down
9 Wilbur Avenue, which is near the site.

10 I think, at best, we could only say that there
11 was a small potential, and the applicants own experts have
12 said that that potential is almost zero, that there will
13 be a ground hugging plume, which might interfere with
14 traffic along Wilbur Avenue or any of the other streets
15 near the facility.

16 I think what the Committee determined to do, as
17 was best to address this upfront, rather than after,
18 potentially an accident that where we got the word through
19 the newspapers or the local press. So what we've asked
20 the applicant to do and I think they've concurred is to
21 prepare a plan to see how they might mitigate a potential
22 plume going to ground and affecting traffic in the nearby
23 area, but most particularly on Wilbur Avenue.

24 The only other item is that the staff has
25 requested and the applicant has agreed that the milestones

1 provision that flows from the Governor's Executive Orders,
2 basically keeping track of the construction schedule of
3 projects that are being licensed by the Commission, and
4 assuring that they're being brought on line as quickly as
5 possible, the applicant has agreed that that may be
6 included as a provision essentially an appendix to the
7 overall compliance and conditions.

8 So with that, that's the total package we have
9 before us. And with that, I'll let the staff and the
10 applicant address you and Mr. Chapman.

11 CHAIRPERSON KEESE: Applicant.

12 MR. VARANINI: Thank you, Commissioner Keese.
13 I'm Gene Varanini with the law firm of Livingston and
14 Mattesich and I'm project counsel. Mark Herera from
15 Mirant is with me today and he would have a couple of
16 words about the process.

17 MR. HERERA: On behalf of Mirant Corporation, I
18 want to thank the Commission for their consideration in
19 this proceeding. I certainly want to compliment staff for
20 their professional way that they conducted themselves
21 during the entire course of this proceeding. And we look
22 forward to a favorable decision. Thank you.

23 CHAIRPERSON KEESE: Thank you.

24 Staff.

25 STAFF COUNSEL DeCARLO: Staff has had the

1 opportunity -- I'm sorry. This is Lisa DeCarlo staff
2 counsel.

3 We have had the opportunity to review the
4 Committee's proposed decision proposed conditions for
5 this, 6 and 7. And we are pleased that the Committee has
6 attempted to address the potential for plume impacts. We
7 do not object to the adoption of the proposed decision
8 with the inclusion of these conditions.

9 CHAIRPERSON KEESE: Thank you.

10 And I gather the applicant has accepted these
11 conditions?

12 MR. VARANINI: That's correct.

13 CHAIRPERSON KEESE: Thank you.

14 Mr. Chapman, we have two witness who have asked
15 to speak on this issue.

16 Mr. Chapman.

17 MR. CHAPMAN: Tony Chapman, Sportsman's Yacht
18 Club. I'm here today to speak in favor of your adoption
19 of this project, and also offer several thank yous to the
20 Commission.

21 Mr. Shean ran over the changes that have occurred
22 here. And the applicant, Mirant Corporation, and Mark
23 Herrera, in particular, showed a gigantic particular leap
24 of faith and confidence in this procedure, when he was
25 able to come up with the enhanced site plan that took care

1 of the Sportsman's major concern.

2 So on behalf of Sportsman, we welcome Mirant to
3 the neighborhood and look forward to the cleanest
4 construction site in town.

5 I also want to offer a word, a token of
6 Sportsman's thanks to the project, the staff manager for
7 this project, Cheri Davis. The course of this procedure
8 was quite an experience for a new and one-time intervenor.
9 When you get into one of these procedures with this many
10 old pros and veterans, as the rustle and the bustle goes
11 by, you look over to them and you never see a bruise, of
12 course that's probably covered by all their scars.

13 (Laughter.)

14 MR. CHAPMAN: But the new guy showed his bruises
15 at times, and there was a time when I think Ms. Davis and
16 I both were dealing with some bruises and trying to
17 encourage each other a little bit. I want to ask her to
18 come up here and join me at the podium, just real quickly,
19 so that I can present a plaque that has a --

20 CHAIRPERSON KEESE: She likes public appearances.

21 (Laughter.)

22 MR. CHAPMAN: It has a little saying on it that
23 represents what I think she indicated her feelings to me
24 about this process were, is that if we got to the end of
25 it and we believed that we created a better job than what

1 showed up on their desk a year ago, that she was going to
2 be proud of this project.

3 So I had a little saying here that says, "Be
4 proud, square peg so strong and sound when that good fit
5 is found.

6 "In appreciation of the consideration and concern
7 shown by Cheri Davis for the protection and preservation
8 of the Sausalito Home of the Sportsman's Yacht Club."

9 (Applause.)

10 CHAIRPERSON KEESE: Thank you for your testimony.

11 Mr. Boyd, do you care to --

12 MR. CHAPMAN: One more quick presentation.

13 (Laughter.)

14 MR. CHAPMAN: Sorry, you know I love to do this.

15 Now, I've got one more plaque here, and I think
16 if I just read the caption on it, it will indicate who I
17 want to recognize with this.

18 "If a projects is built one nail at a time,
19 sometime it can only be completed by an old rusty one."

20 Mr. Shean.

21 (Laughter.)

22 (Applause.)

23 CHAIRPERSON KEESE: Mr. Boyd.

24 MR. BOYD: Mike Boyd, CARE.

25 CHAIRPERSON KEESE: You're going to support this

1 one?

2 MR. BOYD: What's that?

3 CHAIRPERSON KEESE: You're going to support this
4 one?

5 MR. BOYD: No, sir.

6 (Laughter.)

7 CHAIRPERSON KEESE: I know you guys never saw a
8 power plant you didn't like, but we're not that way. We
9 only like renewables.

10 Basically, I'm hear to reiterate our objections
11 to this project from CARE, who was an Intervenor, and I
12 thank staff for their recent response to several of our
13 petitions that we've submitted to the Committee.

14 And in regards to those responses, first, I don't
15 see how the fact that the air district currently
16 doesn't -- is currently in nonattainment for ozone. I
17 still reiterate that we believe that there isn't a basis
18 for them issuing a permit for this project, as long as
19 they're not in compliance with the State Implementation
20 Plan.

21 Additionally, CARE has raised the same issue that
22 we've been raising in the Metcalf and other projects in
23 the State, which is the fact that your analysis isn't
24 including impacts of the energy crisis itself, in the
25 analysis, the environmental analysis. It isn't considered

1 an effect that you're doing CEQA analysis on, and we have
2 a problem with that and we object to it.

3 The other thing that I want to make you aware of
4 is that CARE has a number of members in the area that are
5 strongly opposed to it. Now, I don't know if the
6 Commissioners are aware of this or not, but CARE did
7 prepare legal action in a case in Blythe.

8 And while I know this isn't related directly to
9 this project, I would point out that in this legal action
10 filed in the Superior Court in Blythe, which I have a
11 stamped copy of here, I only had one, so I'll leave it for
12 you if you want it or I'll send it to you later.

13 In this case --

14 CHAIRPERSON KEESE: Stick with this case. Stick
15 with this case. Make it relevant.

16 MR. BOYD: Let me tell you how this relates to
17 this case. It will be very quick.

18 Basically, what happened down there is CARE -- we
19 don't have an attorney. I'm not a lawyer, but what we did
20 do is we did prepare litigation for one the intervenors
21 down there.

22 Her name was Carmella, and she filed En Forma
23 Poppers and what that means is a popper's lawsuit. And I
24 should make you aware that Mr. Joe Hawkins who is a member
25 of our organization and also a recipient of Social

1 Security is eligible to file such a lawsuit in this case,
2 and has requested us to prepare it for him.

3 So I would encourage you to reconsider our
4 filings and reconsider Mr. Hawkins' concerns, because if
5 you don't, we've made our record and we've objected, so
6 thank you for your time.

7 CHAIRPERSON KEESE: Thank you, Mr. Boyd.

8 Anybody else care to speak to this issue?

9 MR. SHEAN: As the Rusty Old Nail, I just wanted
10 to --

11 CHAIRPERSON KEESE: Let us take a vote.

12 MR. SHEAN: I'd just like to thank Mr. Chapman.
13 I have to say that in my nearly 25 years of doing this,
14 this is one of those exceptional cases where you know that
15 what you've done to do your job well has affected the
16 outcome and affected the lives of others in a positive
17 way. So I truly appreciate the recognition that he's
18 given to me and to Cheri and I think he's also indicated
19 the grate cooperation and forthcomingness of the
20 applicant, and they have been -- and it's nice to be part
21 of a proceeding like this.

22 Thank you.

23 CHAIRPERSON KEESE: Thank you. Do I have a
24 motion?

25 COMMISSIONER MOORE: Mr. Chairman, I move the

1 Presiding Member's Proposed Decision as amended and the
2 errata and amendment sheet that was submitted by Mr. Shean
3 in this.

4 CHAIRPERSON KEESE: Motion by Commissioner Moore.

5 COMMISSIONER ROSENFELD: Second.

6 CHAIRPERSON KEESE: Second by Commissioner
7 Rosenfeld.

8 All in favor?

9 (Ayes.)

10 Opposed?

11 Adopted five to nothing.

12 Item 4, pegasus Partners has been moved to the
13 June 6th meeting.

14 Item 5, East Altamont Energy Center, Docket
15 Number 01-AFC-4. Possible approval of the Executive
16 Director's Data Adequacy Recommendation for the East
17 Altamont Energy Center.

18 PROJECT MANAGER DAVIS: Good morning,
19 Commissioners, my name is Cheri Davis and I am the project
20 manager for this case as well. And to my right is Lisa
21 DeCarlo, staff counsel for this project.

22 On March 29th, 2001, East Altamont Energy Center,
23 LLC a wholly owned subsidiary of Calpine Corporation,
24 filed an Application For Certification of an 1,100
25 megawatt natural gas fired combined cycle power plant in

1 the far northeast corner of Alameda County. The applicant
2 is applying under the 12-month certification process.

3 On May 2nd, the Commission found the application
4 data inadequate in 13 out of 23 areas. Since that time,
5 staff has met with the applicant, held two conference
6 calls and evaluated five supplemental filings.

7 The supplemental filings sufficiently addressed
8 12 out of the 13 technical areas that were formally data
9 inadequate. However, staff finds the application still
10 inadequate in the area of water resources. The inadequacy
11 pertains to the requirement that the applicant provide all
12 information required by the Regional Water Quality Control
13 Board to apply for waste discharge requirements. The
14 information required to meet this Regulation is critical
15 to staff's review of the project.

16 Without this information, neither staff nor the
17 Board can begin an analysis of certain water related
18 impacts. And delay in receiving this information is
19 likely to cause delays in the project schedule. As is our
20 normal practice, staff has conferred with the Regional
21 Water Quality Control Board, in this case the Central
22 Valley District. And they posed a question, does the
23 application contain all information required by the Board
24 to apply for waste discharge requirements. The answer was
25 a definitive no.

1 Calpine has assured staff that they will have the
2 required information to the Energy Commission and the
3 Board by June 20th and requests that the Energy Commission
4 deem the application adequate at this time.

5 Staff is concerned, however, that deeming the
6 application complete without the information I've
7 described earlier could impact the Board's ability to
8 provide input for our process in a timely manner, and also
9 to inhibit staff's ability to evaluate the project, both
10 of which could delay issuance of our staff assessments.

11 Calpine maintains that such delays will not
12 occur. However, neither the Board nor our technical
13 staff, who will actually be performing the analysis, share
14 the applicant's confidence.

15 We recommend that you find the application
16 certification data inadequate. And I would like to
17 reiterate staff's pledge to work with the Committee, the
18 applicant and all relevant agencies to help the applicant
19 meet their desired start date once the information is
20 received.

21 CHAIRPERSON KEESE: The Applicant.

22 MR. ELLISON: Thank you, Mr. Chairman and Members
23 of the Commission. I'm Chris Ellison, Ellison, Schneider
24 and Harris, representing the applicant, Calpine. To my
25 right is Alicia Torre, project manager on the East

1 Altamont Energy Center Project.

2 First of all, we dispute the staff's finding of
3 data inadequacy and are asking the Commission today to
4 find that the project with the amended supplemental
5 filings does meet the Commission's requirements for data
6 adequacy.

7 The nature of the disagreement that we have with
8 staff on this issue, which I believe is a good faith
9 disagreement, is whether the Commission's regulations for
10 data adequacy require that the application include all of
11 the information necessary to apply for waste discharge
12 requirements or whether, as the staff is now interpreting
13 the regulations, whether they require all the information
14 that the Board ultimately needs to issue the waste
15 discharge requirements.

16 The Regional Board has a process similar to the
17 Energy Commission, where they accept an application and
18 then can require further information. And what we are
19 debating today is whether that further information is
20 required for data adequacy.

21 Before I go any further, let me say two things
22 and I'm going to get into our legal argument in a moment,
23 but there are two practical things. First of all, this is
24 not the first time on the projects that I've been involved
25 in and not the first time for Calpine where we have

1 believed that staff is changing its interpretation of data
2 adequacy requirements.

3 Typically, we do not bring these issues before
4 you, because it is easier and more expeditious to simply
5 comply with those issues as they come up. In this case
6 however, we bring this before you because if you agree
7 with staff, it will make it very difficult, absent a very
8 accelerated schedule by the Committee in this case, for
9 this project to achieve its objective of being on line for
10 the summer Speak of 2004.

11 I'll get into that a little further, but that is
12 the practical significance to Calpine of this issue, is
13 whether this project can be on line for that summer peak.

14 The second thing I want to say is I want to
15 emphasize what is not in dispute, at least as far as we
16 understand it. I think this is actually as important as
17 anything. First of all, I want to emphasize, there is no
18 dispute that we will be filing all of the information
19 desired by staff, and that we will be doing so
20 expeditiously. We will be filing it by June 20th.

21 There is no dispute about what staff's
22 information -- what staff information they will get.
23 Secondly, and contrary to what is in the staff's data
24 inadequacy written filing as well as the statements this
25 morning, our conversations with the Regional Water Quality

1 Control Board lead us to conclude that there is not a
2 dispute by the Board, and I don't know if there's a
3 representative of the Board here today, I hope that there
4 is.

5 But our conversations, as recently as this
6 morning with the Executive Director of the Central Valley
7 Regional Water Quality Control Board indicate to us that
8 the Regional Board does not dispute that if the Commission
9 were to find the application adequate today and Calpine
10 were to meet the schedule that it has proposed for filing
11 this information, that the Board can submit the draft
12 waste discharge requirements consistent with the 12-month
13 schedule of the Energy Commission, and consistent with an
14 MOU that exists with the timing called for in an MOU that
15 exists between the Energy Commission and the State and
16 Regional Water Quality Control Boards.

17 What is at issue --

18 COMMISSIONER PERNELL: Do you have that in
19 writing?

20 MR. ELLISON: We do not have that in writing, I'm
21 sorry to say. However, and again if there's a
22 representative of the Regional Board, I would invite you
23 to ask for that today. I will say this --

24 COMMISSIONER PERNELL: I think I'd invite you to
25 ask for that.

1 MR. ELLISON: Let me say this, I say that as an
2 attorney, that's what has been represented to me this
3 morning. Secondly, to back that up, Calpine has made
4 clear that it will accept a day for day slip in the
5 schedule, if that proves not to be true. If the Regional
6 Board cannot meet that schedule for whatever reason,
7 Calpine will accept a day for day schedule in the
8 proceeding to allow them whatever additional time they
9 need to process this application.

10 CHAIRPERSON KEESE: Mr. Ellison, let me just ask
11 here what you're indicating is that staff's position in
12 this case is consistent with a position they've held
13 previously, but that previously you have disagreed with it
14 and chosen to comply. And in this case, even though they
15 are being consistent in their application, you believe in
16 this case we should make an exception.

17 MR. ELLISON: No, I'm not saying that and thank
18 you for phrasing it that way to clarify that.

19 CHAIRPERSON KEESE: That's what I'm --

20 MR. ELLISON: What I meant to refer to earlier
21 was sort of a general approach of Calpine to dealing with
22 data adequacy issues, not the specific interpretation
23 here.

24 As I will describe in a moment, or can I go into
25 now if you prefer, we believe that this is a new

1 interpretation of the Commission's regulations, that the
2 kind of waste that we're talking about here is cooling
3 tower blowdown. It is a very typical waste for power
4 plants to have.

5 We are aware of only one instance in the Energy
6 Commission's prior siting history in which the kind of
7 information being called for here has been asked for as a
8 data adequacy requirement. In addition, the Energy
9 Commission's Memorandum Of Understanding with the State
10 and Regional Boards makes clear that this information will
11 come in after data adequacy.

12 So both precedent from prior cases as well as the
13 Commission's MOU as well as the Commission's regulations
14 on this issue all call for the amount of information
15 necessary to apply for, but not necessarily all the
16 information that the Board needs to issue waste discharge
17 requirements.

18 The Commission's B appendix regulations very
19 clearly say that what's necessary for data adequacy is the
20 information to apply for waste discharge requirements.

21 Calpine has submitted the application form and
22 all of the information that it calls for to staff along
23 with an AFC that includes all of the information typically
24 in AFCs that you have deemed adequate in previous cases.

25 The one case that staff has directed us to, that

1 suggests where this issue was raised, and this kind of
2 information was raised, was the Blythe case. We have
3 taken a look at the Blythe case.

4 In that case, they did submit some of the
5 information necessary for a report of waste discharge as
6 part of data adequacy. However, the ultimate information
7 that they submitted to the Regional Board was much more
8 extensive than the information that was given to staff as
9 part of data adequacy.

10 So even in that one case, the fact is that that
11 case was accepted as data adequate without all of the
12 information that the Regional Board ultimately needs to do
13 its draft waste discharge requirements. And in every
14 other case that we are aware of, not even that amount of
15 information has been called for by staff and the
16 Commission.

17 Staff has suggested to us that the other cases
18 are distinguishable from this one because in Blythe and in
19 this case, East Altamont, the proposed project is using
20 evaporation ponds. Whereas, in some of the other cases,
21 the proposal was to dispose of the waste either using
22 percolation ponds or injection, or that sort of thing.

23 Ironically, in those other cases the exposure to
24 groundwater waste is greater than if you are proposing
25 evaporation ponds. So we do not see that distinction both

1 as a practical matter nor do we see it legally. We
2 certainly don't see anything in Appendix B that makes that
3 distinction. We certainly don't see anything in prior
4 cases that make that distinction.

5 So to be very clear, we do believe that this
6 application was prepared by a very experienced applicant
7 using the same kinds of legal and technical resources that
8 it has used in many other proceedings. And, frankly,
9 Commissioners, the way that the people prepare these
10 applications is they look at what the Commission has
11 accepted and is adequate in prior proceedings and try to
12 match that.

13 And that is what occurred here, it is very much a
14 surprise to Calpine not that this information would be
15 required at some point in the process, the Regional Board
16 has made that clear, staff has made that clear. We have
17 had a number of conversations with them, but what has come
18 as a surprise to us is that this information would be a
19 data adequacy requirement and that we would have to do
20 this before we could go forward with the application.

21 Having said that, let me read to you, briefly,
22 the language of the Memorandum Of Understanding which I
23 think provides the most definitive Commission
24 interpretation of the Appendix B language, which again,
25 the Appendix B language calls for all information

1 necessary to apply for waste discharge requirements.

2 The MOU that was executed by the Energy
3 Commission and the State Board and the Regional Boards
4 provides quote, "After the Commission has accepted an
5 application as being complete, pursuant to the
6 Commission's regulations, the Commission staff will
7 request the applicant, if appropriate, to file the
8 pertinent permit applications with the Regional Board with
9 the required filing fee."

10 Paragraph, "The Regional Board staff will
11 evaluate the permit application as soon as practicable and
12 notify the Commission staff as well as the applicant of
13 whether the application is complete or whether additional
14 information is required to initiate the Regional Board's
15 formal review process."

16 Now, I emphasize that quote begins with, "After
17 the Commission has accepted an application as being
18 complete." And then as I mentioned later clearly
19 contemplates that the Regional Board might require
20 additional information after data adequacy to proceed.

21 That, I think, makes clear and we certainly
22 relied upon those kinds of documents in preparing these
23 applications, makes clear that in prior cases, as well as
24 in the Commission's thinking when the MOU was prepared
25 that not all of the information necessary for the Regional

1 Board's waste discharge requirement analysis is a matter
2 of data adequacy.

3 Let me close by speaking for a moment to a couple
4 of practical issues here. First, I want to emphasize
5 again what we have been told by the Regional Board and
6 Calpine's willingness to accept a day for day slip if the
7 Board cannot provide the information to the Committee
8 necessary for the PSA to come out on schedule.

9 Secondly, I understand that staff may be
10 concerned about the Commission's decision setting some
11 sort of precedent for future cases on this question. And
12 we appreciate that concern. Calpine is certainly now
13 aware, as we were not before, that staff desires this
14 information as a matter of data adequacy, leaving aside
15 whether the Appendix B regulations should be changed to
16 reflect that. We now understand that and we certainly
17 will incorporate that information in any future filings.

18 With respect to the precedent for other entities,
19 let me say that there are a number of executive orders out
20 there and Executive Order 2801 in particular allows the
21 Commission in this time to do some fairly extraordinary
22 things to expedite cases, including modifying its
23 procedure on a case by case basis.

24 If you wanted to invoke your authority under that
25 executive order, you could find this application data

1 adequate with the commitment on the day for day slip that
2 we've discussed and recognizing all the other
3 circumstances of this case without necessarily setting a
4 precedent for future cases, and I would be happy to
5 describe that further, if you wish.

6 Finally, let me talk with what is really the
7 practical issue here. We are adequate, in staff's eyes,
8 in every single area except for this matter. The
9 practical effect of the decision you are making today is
10 this, if you find that we are data adequate, work will
11 begin on all of those other areas.

12 If you find that we are not adequate, everything
13 stops for 45 days or longer depending upon how much time
14 staff needs to review the information when it comes in.

15 As a practical matter, what that means ironically
16 for staff, is that if you find we are inadequate and
17 everything stops, then the Committee in this case will be
18 confronted with the following choice. They will either
19 have to abandon any effort to meet the summer peak of
20 2004, and I don't want to elaborate on the consequences of
21 that because I know that you're aware of the situation
22 we're in, or alternatively, they will have to accelerate
23 the schedule of this case substantially and finish this
24 case in something like ten, ten and a half months to
25 compensate for time that we lose because nothing is

1 happening now.

2 If the Committee makes that decision, ironically
3 what it does is put more pressure on staff in all the
4 other areas to do the job more quickly than the 12-month
5 schedule would ordinarily allow.

6 So what we're really asking for, the practical
7 effect of your decision today, what we're really asking
8 for is to get this case started on a regular schedule so
9 that we can have staff work begin in all of these other
10 areas, recognizing that if there is a problem on the
11 ability of the Regional Board to address the issues
12 related to this issue, there will be a day for day slip.

13 Thank you.

14 CHAIRPERSON KEESE: Thank you, Mr. Ellison.

15 Staff, will you.

16 STAFF COUNSEL DeCARLO: Thank you. Lisa DeCarlo,
17 staff counsel.

18 First, I would like to state that staff has been
19 very consistent in its interpretation of the data adequacy
20 regulations. The information required to apply for waste
21 discharge requirements differs between the type of
22 discharge. While the waste discharge may be typical, the
23 applicant's proposed method of discharge is not.

24 The only other case that we have seen recently to
25 propose evaporation ponds at the beginning has been blind.

1 And we have provided the applicant with our data adequacy
2 requirements that Blythe had complied with for data
3 adequacy. So we provided that to them previously, so they
4 could get a good idea of what we were looking for.

5 We have confirmed with the Board that the
6 information --

7 COMMISSIONER PERNELL: Which board is this?

8 STAFF COUNSEL DeCARLO: I'm sorry, the Central
9 Valley Regional Water Quality Control Board. We've
10 confirmed with them in our discussions with them that the
11 information provided so far by the applicant does not --
12 is not sufficient to begin an application process. It's
13 not sufficient to apply for the RMWD -- or I'm sorry for
14 the WDR at this point.

15 COMMISSIONER MOORE: Do you have that in writing?

16 STAFF COUNSEL DeCARLO: No, we don't.

17 CHAIRPERSON KEESE: So on that one we have a
18 disagreement, I guess. You say it isn't sufficient and
19 applicant felt it was sufficient for them to start.

20 STAFF COUNSEL DeCARLO: And unfortunately, we had
21 tried to get the Board to come today, but the staff
22 working on this project are on vacation.

23 CHAIRPERSON KEESE: And that means we wouldn't
24 get to the discussion of the nature of the MOU.

25 STAFF COUNSEL DeCARLO: Let me backtrack, the

1 Board has provided something in writing to the applicant.
2 It's a letter dated February 22nd, and it lists the Title
3 27 regulations that the applicant must comply with in
4 order to apply for the WDR.

5 It's actually the application requirements, and
6 we have been going by those requirements in interpreting
7 our Appendix B regulations.

8 CHAIRPERSON KEESE: Okay.

9 COMMISSIONER LAURIE: Mr. Chairman.

10 CHAIRPERSON KEESE: Commissioner Laurie.

11 COMMISSIONER LAURIE: Mr. Chair, I'd recommend
12 this matter be tabled. I would recommend that a call be
13 placed to the Regional Water Quality Control Board and a
14 request be made by this Commission to receive a message in
15 fax in a writing whether or not they have sufficient
16 information to constitute an application for whatever
17 permits are required. I want to know the position of the
18 Board and I would suggest that we have to rely on that
19 information in order to make our decision. And I'm
20 prepared to trail this matter until we get that response.

21 CHAIRPERSON KEESE: Okay.

22 COMMISSIONER PERNELL: Mr. Chairman, two things.
23 I would agree, if we can, with Commissioner Laurie,
24 because our agenda is such that we might be able to have
25 that done and then we can table this and do it today, is

1 one.

2 Secondly, if the information is going to be
3 provided June 20th, which is about three weeks, and I
4 understand this is a 12-month process, certainly whomever
5 is presiding over this case, I would suspect can make up
6 three weeks in 12 months.

7 So I don't -- when you argue the end game, if you
8 will, of the end date to be 2004, I am very optimistic
9 that we can make that date unless something else is not
10 filed properly or some other issue arises.

11 So I don't think that this is a devastating -- I
12 don't think that we're in a devastating point here. We
13 can find out from the Water Board or we can make up the
14 three weeks over the 12-month period. This is not a
15 21-day process, so certainly there is some flexibility in
16 there somewhere.

17 CHAIRPERSON KEESE: Okay. We're going to hold
18 this item over for -- I'll let you make a comment in just
19 one moment. We're going to hold this over and take up a
20 few other items. At the request of the Chairman, I would
21 like staff to inquire of the district and see if we can
22 get a definitive answer.

23 Secondly, Mr. Ellison has raised the issue of
24 whether the Commission should consider the Governor's
25 emergency orders in this regard which would give another

1 avenue to the Commission, so I would like the staff to
2 mull that while we're making this phone call.

3 STAFF COUNSEL DeCARLO: If I may, may I speak to
4 that really quickly. The Executive Order referenced by
5 Mr. Ellison actually only refers to expedited cases. It
6 does not refer to the 12-month process.

7 COMMISSIONER LAURIE: Mr. Chairman, I would
8 suggest that if the Governor intends to expedite our
9 12-month siting process, he has the power to do so and I
10 don't think he has done so.

11 CHAIRPERSON KEESE: Okay. Mr. Ellison, you have
12 a final quick comment.

13 MR. ELLISON: Well, several things, but I'll be
14 quick about each of them.

15 CHAIRPERSON KEESE: You want us to get to you
16 before we close this hearing at about 1:00 o'clock.

17 MR. ELLISON: I understand. First and foremost,
18 I want to be clear about the question that I would urge
19 you to pose to the Regional Board. The Regional Board, I
20 think is understandably reluctant to take a position on
21 the Energy Commission's issue of what is data adequate.

22 CHAIRPERSON KEESE: Right. The question is
23 whether your submission is adequate for them to start
24 proceeding.

25 MR. ELLISON: The question that we have posed to

1 them, as late as this morning, and I want to be clear,
2 because I don't want to be accused of having
3 mischaracterized anything --

4 CHAIRPERSON KEESE: Why don't we give a name
5 so --

6 MR. ELLISON: Okay, we spoke with the Executive
7 Director of the Regional Water Quality Control Board, the
8 Central Valley Regional Water Quality Control Board.

9 The question that we posed to them was if we were
10 found data adequate today and we filed the information on
11 June 20th, could you submit the Draft Waste Discharge
12 Requirements consistent with the 150 day schedule of a
13 12-month AFC and the answer was yes.

14 CHAIRPERSON KEESE: Okay, but I believe the
15 question is, that Ms. DeCarlo phrased, was have you
16 submitted enough information for the Regional Board for
17 them to, what are our words?

18 STAFF COUNSEL DeCARLO: For them to apply for a
19 waste discharge requirement.

20 CHAIRPERSON KEESE: To apply for.

21 STAFF COUNSEL DeCARLO: And that's the exact
22 language in the data adequacy regulations.

23 CHAIRPERSON KEESE: Those are the words, I
24 believe, we would be using. Is there enough information
25 here for you to apply for.

1 MR. ELLISON: Can I suggest --

2 CHAIRPERSON KEESE: Not for this grant, but to
3 apply or --

4 MR. ELLISON: Can I suggest two things. One that
5 both questions be posed.

6 CHAIRPERSON KEESE: Both questions.

7 MR. ELLISON: And secondly I agree with Ms.
8 DeCarlo that to apply for is the key here. The letter
9 that the Regional Board gave us in February that's been
10 referred to, and in our discussions with the Regional
11 Board this is the information that the Board ultimately
12 needs to issue the WDR.

13 The question about to apply for is only relevant
14 in the Energy Commission context. So what I think the
15 reason for this disagreement is that the Regional Board is
16 saying here is all the information we need to issue the
17 WDR, and they are saying we don't have that.

18 CHAIRPERSON KEESE: Ms. DeCarlo is going to --

19 STAFF COUNSEL DeCARLO: The letter specifically
20 states that the information --

21 CHAIRPERSON KEESE: Before noon, so that they may
22 be there or not at lunch.

23 STAFF COUNSEL DeCARLO: The information requested
24 or outlined by the Water Board will assist Calpine in
25 preparing the requests -- the report of waste discharge,

1 which is the actual application, so preparing the
2 application --

3 CHAIRPERSON KEESE: I think you understand what
4 the distinction we're making here.

5 MR. ELLISON: One more thing and then I'll
6 reserve to when I come back. The one other thing I do
7 want to make sure that we correct is Commissioner Pernell,
8 you're right that June 20th is only three weeks away.

9 However, when you factor in the amount of time
10 that we believe staff will need to review what we file and
11 to recalendar whether we are adequate or not, we think
12 that's probably more like 45 days, that's how we get the
13 45 days.

14 If staff made some commitment to review it
15 instantly, and there were some other calendar process --

16 COMMISSIONER PERNELL: I think you're doing
17 yourself a disservice, because if she doesn't get to the
18 Water Board before they go to lunch, it's going to be June
19 20th.

20 CHAIRPERSON KEESE: Okay, thank you.

21 STAFF COUNSEL DeCARLO: Thank you.

22 CHAIRPERSON KEESE: Commissioner Laurie, did
23 you --

24 COMMISSIONER PERNELL: Mr. Chairman, I'd like to
25 table this item.

1 CHAIRPERSON KEESE: We're putting this item over
2 for a few minutes.

3 COMMISSIONER LAURIE: Mr. Chairman, I would ask
4 what the Commission's intention are regarding the schedule
5 for today. I can tell you that I have an appointment
6 shortly after the noon area, and --

7 CHAIRPERSON KEESE: The Chair has to leave here
8 at 1:00 o'clock.

9 COMMISSIONER MOORE: I understood that we pushed
10 back till 1:00, so I've modified my lunch plans to go to
11 lunch at 1:00 o'clock.

12 COMMISSIONER LAURIE: Would that work for you?

13 CHAIRPERSON KEESE: Let's try another easy one.

14 Item 7, Bottle Rock Power Corporation. Possible
15 approval of a Petition for a Change of Ownership of the
16 Bottle Rock Geothermal Power Plant from California
17 Department of Water Resources to the Bottle Rock Power
18 Corporation.

19 MR. NAJARIAN: My name is Chuck Najarian. I'm
20 the power plant compliance program manager for the Energy
21 Commission.

22 The Department of Water Resources has petitioned
23 the Commission to approve an ownership change for their
24 Bottle Rock Geothermal Power Plant in the geyserous region
25 of California. The proposed new owner Bottle Rock Power

1 Corporation intends to restart the power plant, a facility
2 that has been in suspension for the last 11 years, due to
3 uneconomical operational history.

4 Staff is recommending approval of the ownership
5 change conditioned upon DWR remaining responsible to the
6 extent necessary for the facility closure. We must find
7 that the knew owner can meet all conditions of
8 certification and subsequent amendments in order to
9 recommend approval of the ownership change.

10 Staff cannot make that finding until there is
11 more certainty that plant closure, should it occur, will
12 be expeditious and environmentally sound. Ideally, the
13 prospective project owner will fully participate in the
14 closure process.

15 However, there are reasons to be concerned about
16 closure. First, the Bottle Rock Power Corporation is a
17 newly formed company with no history of power plant
18 development. Second, there are legitimate questions about
19 steam supply, and therefore a successful profitable
20 restart.

21 After all, it was the lack of steam supply and
22 quality that resulted in DWR putting their plant in
23 suspension for the last 11 years.

24 Apparently, DWR has similar concerns because they
25 negotiated a \$5 million closure bond and \$10 million

1 environmental insurance policy. The policy and bond are
2 to be paid by the new owner and they're to be held by DWR.
3 DWR has indicated that their bond is more than adequate to
4 address closure.

5 However, DWR was concerned enough about
6 successful restart that they included a requirement to
7 revisit the bond every three years so that it could be
8 adjusted over time depending on DWR engineering
9 evaluations.

10 DWR has taken these steps, which staff equates to
11 responsibility, while at the same time, DWR refuses to be
12 named a responsible party if Bottle Rock Power Corporation
13 is unable to perform closure.

14 Although DWR has negotiated the requirement of a
15 bond, and that they be named coinsured on the
16 Environmental Protection Policy, no provision has been
17 made regarding the administration of bond and insurance
18 proceeds.

19 In other words, we ask who will attempt to access
20 the bond and carry out closure.

21 At first glance, one might conclude that the \$5
22 million closure bond should alleviate staff's concerns
23 relative to closure of this facility.

24 Bonding, however, is not money in the bank.
25 Bonding companies are not motivated to pay millions of

1 dollars. In fact, their motivation is quite the opposite.
2 Bankruptcy proceedings can complicate things even further.

3 DWR has an obligation to participate in closure
4 as needed. They obtained the original power plant
5 license, agreed to regulatory requirements, built the
6 power plant, were preparing to close facility and begin
7 working with the community, local government and the
8 Commission to that end.

9 A prospective buyer changed their plans, but not
10 their responsibility to the community and the Commission,
11 given concerns about successful restart and effective
12 closure.

13 In the final analysis, if the new owner cannot
14 participate in closure and if DWR does not remain
15 responsible, responsibility for closure could be
16 transferred to the Commissioner as a result of this
17 ownership change.

18 We urge the Commission to hold DWR accountable,
19 ensure the Commission is never in the inappropriate
20 position of acting as a power plant owner, and find DWR
21 responsible by conditioning the ownership change as
22 articulated in staff's recommendations.

23 That concludes staff's prepared remarks. I'd be
24 happy to answer any questions.

25 CHAIRPERSON KEESE: Thank you. Let's hear from

1 the applicant.

2 MR. JAMES: Bob James, Department of Water
3 Resources Counsel. The Department cannot accept that
4 condition and we will withdraw the petition to approve the
5 change of ownership if that condition is to be imposed.

6 The Department has always wanted to get rid of
7 this plant in an as-is condition and with no further
8 responsibility for it, except what may be in our
9 agreement.

10 And that's been our effort, and we worked with
11 your staff to succeed in doing that. You, the staff, has
12 proposed two conditions. The first condition is
13 acceptable and it says we'll enforce the agreement, and we
14 will. We'll be responsible for getting to the bonding
15 company if it's necessary to get to the bonding company,
16 and to get the insurance coverage, if we need to, but we
17 will not accept responsibility for any financial
18 commitment to the decommissioning of the project.

19 We believe that we've gotten adequate security.
20 We have an appraisal of which we base the five million.
21 We're getting \$10 million worth of environmental insurance
22 to do any environmental cleanup. All of those will be
23 enforced until at least decommissioning is completed. The
24 bond actually goes five years after the end of
25 decommissioning.

1 We can, at any time actually, change the amount
2 of the bond by requesting a reevaluation, which has to be
3 done every three years, but we can do it sooner or so can
4 the buyer, and we can get it appraised. And if need be,
5 we can add more money to the bond, if it looks like the
6 five million is inadequate.

7 We think we've done something that no other
8 applicant to this agency has ever done. We don't know of
9 anybody that's ever been required to do this much and now
10 we're being asked to do more. There's a number of plants
11 that you've approved even up in the geysers for companies
12 that don't have anymore assets than the Bottle Rock Power
13 Corporation has.

14 There's lots of Limited Liability Corporations up
15 there. This plant can't be restarted until you consider
16 the application to restart under your regulation 1769(a).
17 And, at that time, if you see a need for additional
18 security, then I suggest you ask the buyer of Bottle Rock
19 Power Company for additional security.

20 Also, the steam field is under the jurisdiction
21 of the County of Lake. The County of Lake is certainly in
22 a position to ask for security in giving a permit for the
23 steam field.

24 So we think there are other alternatives besides
25 trying to hold the former applicant responsible. And

1 we've felt that the five million is adequate. We advised
2 your staff that we were going to go for five million and
3 we've seen no objection until the petition was filed and
4 now we've got a problem.

5 CHAIRPERSON KEESE: Thank you.

6 Mr. Varanini briefly.

7 MR. VARANINI: Thank you, Mr. Chairman. Gene
8 Varanini with Livingston and Mattesich. I represent the
9 Bottle Rock Power Corporation.

10 I think that DWR has made all the important
11 points. I think from our perspective, we would note that
12 virtually all of your approvals for all of your power
13 plants are to Limited Liability Corporations. And these
14 are corporations who know how to protect the corporate
15 veil from their limited liability companies back up the
16 Chain of Command.

17 So you could have \$13 billion and all you've
18 really got on the ground are the assets on the ground and
19 other assets of that Limited Liability Corporation.

20 First of all, there's a set of sureties in place.
21 There's surety to the county. There's surety to the
22 Department of Oil and Gas and surety to the Department of
23 Water Resources. We applaud the three-year adjustment,
24 because the normal three-year adjustment is you transfer,
25 basically, coverage from insurance to the assets of the

1 company itself.

2 So, in that case, as we go forward, we produce
3 power, those assets become part of the surety arrangement
4 as you go forward and the company becomes essentially, if
5 possible, self assured.

6 That's the way it normally works, and I think
7 that, in fact, we did a very detailed estimate ourselves
8 of our exposure. After all, it's our exposure. We're
9 bringing in substantial new capital to get this thing
10 restarted. Our exposure number was about 3.5 million and
11 the Department beat us upside of the head and basically
12 increased the surety bond to the \$5 million amount. I
13 also pointed out on top of the \$5 million there are
14 salvage values, and there are two other surety processes
15 in place.

16 And I think what we want to do is bring 55
17 megawatts of green power on line as quickly as possible.
18 We've got a four-month window. We will be back for your
19 approval, and we hope to have this thing restarted in four
20 months.

21 CHAIRPERSON KEESE: Thank you, Mr. Varanini.

22 Do we have any --

23 COMMISSIONER PERNELL: Mr. Chairman.

24 CHAIRPERSON KEESE: Commissioner Pernell.

25 COMMISSIONER PERNELL: So I can understand this.

1 We have -- you're with the Department of Water Resources,
2 sir.

3 MR. JAMES: Yes.

4 COMMISSIONER PERNELL: And the Department of
5 Water Resources, we're doing an ownership change? You're
6 selling it to the applicant?

7 MR. JAMES: Right.

8 CHAIRPERSON KEESE: The project.

9 COMMISSIONER PERNELL: And staff is recommending,
10 which I think that we need to have some assurances that if
11 the project is not successful, that it will be cleaned up.

12 And so staff is holding the Department of Water
13 Resources or trying -- suggesting that they be liable for
14 the cleanup, if the applicant doesn't complete it.

15 That's kind of the case here, right?

16 MR. JAMES: That's what I understand the staff
17 wants to do, yes.

18 COMMISSIONER PERNELL: Okay. So I have two
19 thoughts on this. One of them is it's difficult to -- I
20 mean, if I was to put this in a different scenario, and I
21 sold my house to Chairman Keese. And he stayed in it ten
22 years and I had to clean it up and then, you know, the
23 prospective owner comes back on me, so I don't think
24 that's really justified to have someone else liable for
25 something after you sold it.

1 However, I am certainly in agreement with staff
2 that someone has to be liable for the cleanup and that we
3 have to be assured that there's enough revenue in order to
4 do that to make us comfortable that if this project
5 doesn't go forward, that someone would be liable for
6 cleanup, and I would suggest that that someone be the
7 owner, whomever that might be. But that the previous
8 owner be liable, I'm not sure that I'm there.

9 So I would be looking for either some additional
10 bonding capacity or something to ensure that the cleanup
11 will, in deed, happen, but not so much leave it to the
12 Department of Water Resources to be liable for.

13 CHAIRPERSON KEESE: Commissioner Pernell, as I
14 recall, I received in writing, and I heard here, if we're
15 going to require DWR to stay on it, they're off the deal.
16 They withdraw the application for sale. So I think we
17 have to look at it on its face that if we -- we have to
18 look at this as if it is a transfer, we approve it, or we
19 don't approve it.

20 COMMISSIONER MOORE: Mr. Chairman, I think I do
21 understand what Commissioner Pernell is saying. And if my
22 interpretation of this is right, it does satisfy his
23 concerns. So let me iterate what I understand, and I'll
24 make it in the form of a motion. And if I get a second,
25 then we can debate that.

1 I would move that we accept the transfer and
2 accept the offer of liability protection for closure in
3 the form of a bond, as suggested by the applicant, and as
4 the Department of Water Resources has suggested would meet
5 their requirements or it's the equivalent of what they
6 would have to propose or spend in order to clean up.

7 If we accept that, the Department of Water
8 Resources will not be -- the transfer will go ahead and
9 the Department of Water Resources will not be the owner
10 anymore, but we will have a bond of adequate capacity to
11 cover closure and any cleanup that might be there.

12 COMMISSIONER LAURIE: I'll second the motion, Mr.
13 Chair.

14 CHAIRPERSON KEESE: Motion by Commissioner Moore,
15 second by Commissioner Laurie.

16 COMMISSIONER MOORE: On the motion, Mr. Chairman?

17 CHAIRPERSON KEESE: And let me clarify we have a
18 proposed order here, and I believe that what you're
19 saying, and I'll push it so that we understand, this would
20 be the staff motion deleting Section B?

21 COMMISSIONER MOORE: That's right.

22 CHAIRPERSON KEESE: Okay.

23 COMMISSIONER MOORE: That's correct. And Mr.
24 Chairman --

25 CHAIRPERSON KEESE: On the motion.

1 COMMISSIONER MOORE: On the motion, the reason
2 that I believe that motion addresses Commissioner
3 Pernell's question is that it does not leave the trail
4 back to a recalcitrant or reluctant DWR. In fact, it
5 removes them and puts in place a surety bond. And I
6 understand the difficulty that individuals from staff and
7 all the way up to Commissioners have with bonds.

8 I have done a little bit of investigation to find
9 out whether there was an alternative. I can't find one.
10 So in this sense, we have to trust to the market forces
11 that that kind of a posting does cover us.

12 Frankly, I want to stay away from something that
13 involves a disagreement between agencies here, and simply
14 go to the market and say this is a transfer in good faith
15 and I think the money is enough to cover the projected
16 costs of clean up. And I hope, I trust that that answers
17 Commissioner Pernell's questions.

18 If it doesn't, I probably would be prepared to
19 withdraw the motion.

20 COMMISSIONER PERNELL: Well, that goes along,
21 way. Yes, sir.

22 COMMISSIONER LAURIE: Mr. Chairman, if I may.

23 CHAIRPERSON KEESE: Commissioner Laurie.

24 COMMISSIONER LAURIE: I am respectful and I have
25 concurrence with the concerns expressed by Mr. Najarian.

1 I don't look at it as DWR selling it. I look at it as the
2 State of California selling it. They just happen to have
3 a different first name than we do, so the State, either
4 one way or the other, will bear some degree of ethical, if
5 not legal, responsibility should things go upside down.

6 I'm fully aware of the problematic nature of
7 seeking to enforce a bond. In my career, I've sought to
8 do so many times, and I find the process to be rigorous.
9 I know of no viable substitute for that. You can't do
10 cash. You can't do letter of credit, which is based on
11 cash. I think alternatives are simply not available. And
12 the bottom line, I think as a matter of public policy,
13 it's in the best interests of the State to have the
14 transfer go through. And for that I, as a commissioner,
15 am willing to bear the risk.

16 CHAIRPERSON KEESE: Thank you. We have a
17 motion --

18 COMMISSIONER PERNELL: Mr. Chairman, on the
19 motion.

20 CHAIRPERSON KEESE: Commissioner Pernell.

21 COMMISSIONER PERNELL: Two other concerns. One
22 of them is the bonding company itself, and I raise this
23 because I was reading in the paper about a bonding company
24 for a golf course that, you know, was a shell.

25 So I would recommend that the bonding company be

1 not only licensed, but actually checked out to make
2 sure --

3 COMMISSIONER LAURIE: It would have to be a --

4 COMMISSIONER PERNELL: -- it is a legitimate
5 bonding company.

6 And the other one is, and I'll address this to
7 staff, whether or not they feel that the \$5 million bond
8 is sufficient for cleanup?

9 MR. NAJARIAN: Thank you, I want to take that
10 opportunity to clarify certain remarks that were made.
11 Staff has never contested that \$5 million bond. We're not
12 asking to add to that amount. I want to make that real
13 clear.

14 Our concern is that the vehicle for the funding,
15 i.e. the bond, and the administration of those proceeds, I
16 mean, I can look forward. I can think about the logistics
17 of all that. And it might sound fairly straightforward
18 upfront, but I can imagine what would be involved should a
19 worst case situation unfold, so that's what we're bringing
20 to the table, not the amount.

21 CHAIRPERSON KEESE: Thank you. And I would say
22 in that regard, I did hear DWR indicate that they would
23 use their best efforts in enforcing that. I think, if you
24 would, it would be helpful to us if we would receive that
25 in writing.

1 MR. NAJARIAN: Yes.

2 CHAIRPERSON KEESE: And it probably will be
3 important as we proceed, because if we approve this
4 transaction Bottle Rock will be back in front of us in
5 another four months. I think it would be appropriate if
6 you would give us that in writing.

7 Do we have -- Commissioner Laurie.

8 COMMISSIONER LAURIE: Mr. Chairman, I want to
9 make sure my position is clear again. I agree with Mr.
10 Najarian.

11 If we too enforce the bond, it's going to be our
12 responsibility to do something with it. I think that
13 would be a challenge. I think that will be a difficult
14 thing to do. And I think we'll be a mess.

15 I am voting for the name change to allow it to go
16 forward. Simply in balancing the State's interests, I
17 think it's simply the better thing to do. And I fully
18 respect the problems that we will encounter should an
19 enforcement against the bond be necessary.

20 CHAIRPERSON KEESE: Thank you.

21 All in favor?

22 (Ayes.)

23 CHAIRPERSON KEESE: Opposed?

24 Adopted five to nothing.

25 SECRETARY McCANN: Mr. Chairman, we need to take

1 about a two minute break for a phone call for our
2 reporter.

3 CHAIRPERSON KEESE: Two minute break.

4 (Thereupon a brief recess was taken.)

5 CHAIRPERSON KEESE: We're back in order.

6 COMMISSIONER LAURIE: Item number 26.

7 CHAIRPERSON KEESE Your Item 26 will take three
8 minutes.

9 We're going to apologize to staff, we're going to
10 make this in 40 minutes. Why don't we just slide through
11 it.

12 Item 8, Contra Costa Water District. Possible
13 Approval of Contract 500-00-024 for \$130,000 to evaluate
14 the effects of chlorine dioxide pre-oxidation on ozone
15 demand, and thus energy consumption.

16 COMMISSIONER LAURIE: Move the recommendation,
17 Mr. Chairman.

18 CHAIRPERSON KEESE: Motion by Commissioner
19 Laurie.

20 COMMISSIONER ROSENFELD: Second.

21 CHAIRPERSON KEESE: Second by Commissioner
22 Rosenfeld.

23 Audience care to oppose?

24 Hearing none, all in favor?

25 (Ayes.)

1 CHAIRPERSON KEESE: Opposed?

2 Adopted three to nothing.

3 Thank you.

4 Item 9, department of Motor Vehicles. Data
5 processing methodology. And we have four proposals, four
6 consulting contracts on this.

7 COMMISSIONER LAURIE: Mr. Chairman, I move items
8 9 A, B, C, and D.

9 COMMISSIONER ROSENFELD: Second.

10 CHAIRPERSON KEESE: Motion by Commissioner Laurie
11 and second by Commissioner Rosenfeld.

12 Any opposition in the audience?

13 Hearing none, all in favor?

14 (Ayes.)

15 CHAIRPERSON KEESE: Opposed?

16 COMMISSIONER LAURIE: This is an applicant's
17 dream, Mr. Chairman.

18 (Laughter.)

19 CHAIRPERSON KEESE: Again, approved three to
20 nothing, is that what we said the last time, recording it.

21 CHAIRPERSON KEESE: Item 10, New Buildings
22 Institute. Possible Approval of Contract 400-00-034 for
23 \$166,779 to list HVAC components frequently installed
24 improperly, et cetera.

25 COMMISSIONER ROSENFELD: I move.

1 COMMISSIONER LAURIE: Second.

2 CHAIRPERSON KEESE: Motion by Commissioner

3 Rosenfeld, second Commissioner Laurie.

4 Any opposition in the audience?

5 All in favor?

6 (Ayes.)

7 CHAIRPERSON KEESE: Opposed?

8 Adopted.

9 Item 11, Lawrence Berkeley National Laboratory.

10 Possible Approval of Contract 500-00-021 for \$228,000 to

11 develop information and tools in support of SB 1771, a

12 mandated greenhouse gas reduction registry.

13 COMMISSIONER ROSENFELD: I so move.

14 COMMISSIONER LAURIE: Second.

15 CHAIRPERSON KEESE: Motion Commissioner Rosenfeld

16 second by Commissioner Laurie?

17 Any other Commissioner have any comments?

18 Seeing none, all in favor?

19 (Ayes.)

20 CHAIRPERSON KEESE: Approved three to nothing.

21 Item 12, Gas Technology Institute. Possible

22 Approval of contract 500-00-022 for \$646,000 to become a

23 public interest member of GTI for the period of July 1st,

24 2001 to June 30th, 2003.

25 COMMISSIONER ROSENFELD: I so move.

1 COMMISSIONER LAURIE: Second.

2 CHAIRPERSON KEESE: Motion by Commission

3 Rosenfeld, second by Commissioner Laurie.

4 Any objection?

5 All in favor?

6 (Ayes.)

7 CHAIRPERSON KEESE: Opposed?

8 Adopted three to nothing.

9 Item 13, Wind Turbine Company. Possible Approval
10 of contract 500-00-019 for \$1,300,000 to continue
11 development testing of lower cost, commercially viable
12 wind turbines at the Fairmont wind site in southern
13 California.

14 COMMISSIONER ROSENFELD: I enthusiastically
15 support.

16 COMMISSIONER LAURIE: Second.

17 CHAIRPERSON KEESE: Enthusiastically moved by
18 Commissioner Rosenfeld and seconded by Commissioner
19 Laurie.

20 All in favor?

21 (Ayes.)

22 CHAIRPERSON KEESE: Opposed?

23 Adopted three to nothing.

24 Item 14, PIER Environmental Technical support
25 contract. Possible approval of \$1,050,000 second-year

1 funding for contract 700-00-019 with the University of
2 California, Institute for Energy Efficiency, Office of the
3 President.

4 COMMISSIONER ROSENFELD: I so move.

5 COMMISSIONER LAURIE: Second.

6 CHAIRPERSON KEESE: We have a motion by
7 Commissioner Rosenfeld second by Commissioner Laurie.

8 Does Mr. Cole care to say anything or --

9 MR. COLE: Nothing.

10 CHAIRPERSON KEESE: Thank you.

11 All in favor?

12 (Ayes.)

13 CHAIRPERSON KEESE: Opposed?

14 Adopt three to nothing.

15 Item 15, Electric Power Research Institute.

16 Possible Approval of contract 500-00-023 for \$4,305,302
17 for the 2001 and 2002 memberships.

18 COMMISSIONER ROSENFELD: So moved.

19 COMMISSIONER LAURIE: Second.

20 CHAIRPERSON KEESE: Motion Commissioner
21 Rosenfeld, second Commissioner Laurie.

22 Any objections?

23 All in favor?

24 (Ayes.)

25 CHAIRPERSON KEESE: Opposed?

1 Adopted three to nothing. Sorry you missed it,
2 Alan.

3 Item 16, university of California Irvine.

4 Possible approval of interagency agreement
5 500-00-020, for \$2,347,507 to cofund advanced technology
6 for the deployment of microturbine generators.

7 COMMISSIONER ROSENFELD: So moved.

8 COMMISSIONER LAURIE: Second.

9 CHAIRPERSON KEESE: Motion by Commissioner
10 Rosenfeld, second by Commissioner Laurie.

11 Any comments?

12 All in favor?

13 (Ayes.)

14 CHAIRPERSON KEESE: Opposed?

15 Adopted four to nothing.

16 Item 17, California Air Resources Board.

17 Possible Approval of interagency agreement 500-00-017 for
18 ARB to disburse to the Commission \$7,735,000 for services
19 to be rendered and expenses incurred in accordance with
20 ARB guidelines for the lower emission school bus program
21 incorporated into this agreement as Exhibit E.

22 Does somebody want to just comment on what that
23 is?

24 COMMISSIONER PERNELL: I'll move it.

25 CHAIRPERSON KEESE: The Committee supports it.

1 Motion by Commissioner Pernell.
2 COMMISSIONER ROSENFELD: Second.
3 CHAIRPERSON KEESE: Second by Commissioner
4 Rosenfeld.
5 Any comments?
6 All in favor?
7 (Ayes.)
8 CHAIRPERSON KEESE: Opposed?
9 Adopted.
10 Item 18, Carl Moyer Advanced Technology Program.
11 Possible approval of funding for four grants and for
12 heavy-duty engine NOx reduction projects.
13 Do I have a motion.
14 COMMISSIONER ROSENFELD: So moved.
15 CHAIRPERSON KEESE: Motion by Commissioner
16 Rosenfeld.
17 COMMISSIONER PERNELL: Second.
18 CHAIRPERSON KEESE: Second by Commissioner
19 Pernell.
20 Any objection?
21 All in favor?
22 (Ayes.)
23 CHAIRPERSON KEESE: Opposed?
24 Adopted.
25 Do we have --

1 COMMISSIONER LAURIE: We have some additional
2 items, Mr. Chairman.

3 CHAIRPERSON KEESE: We may as well take those up
4 first.

5 Item 25, Modesto Irrigation District. Possible
6 approval of a committee assignment for the Modesto
7 Irrigation District small power plant exemption.

8 I'd entertain a motion that Commissioner Moore be
9 lead and Commissioner Rosenfeld be second.

10 COMMISSIONER LAURIE: Move.

11 COMMISSIONER PERNELL: Second.

12 CHAIRPERSON KEESE: Motion by Commissioner
13 Laurie, second by Commissioner Pernell.

14 All in favor?

15 (Ayes.)

16 Opposed?

17 Adopted four to nothing.

18 Item 26, Site Regulations, General Discussion
19 about adopting revised siting regulations on an emergency
20 basis.

21 COMMISSIONER LAURIE: Mr. Chairman, last February
22 I brought to the Commission a series of proposals to
23 modify our regulations on an emergency basis.

24 At that time, 28X was just starting through the
25 process. Following discussion, I indicated that I was

1 prepared to await the legislative conclusion of 28X, but
2 indicated that I was also anxious for the Commission to
3 address these issues, and indicated it was my intent to
4 bring the matter back -- or conduct a workshop and bring
5 the matter back to the Commission following Siting
6 Committee considerations within 30 days.

7 Well, 28X took longer. I'm now advised that
8 staff is going to take the view that if the Commission
9 wants to proceed with this, that it be done not on an
10 emergency basis, which means that the process takes a
11 year.

12 That's not satisfactory to me, Mr. Chairman.
13 There are some proposals which include such issues as the
14 complicated question of who's allowed to talk to who
15 during siting hearings, what role our staff plays vis a
16 vis staff of sister agencies and those are probably the
17 two big ones.

18 But my point is that the Governor has declared an
19 energy emergency, limited as it may be. These are issues
20 that have been around for at least the four years since
21 I've been here. And I'm not satisfied that adequate
22 progress has been made to conclusively determine whether
23 or not the Commission wants to change its own rules,
24 although, I get a sense that it is prepared to move
25 forward on them, but I'm not prepared to sit here and wait

1 for a year to allow that to happen.

2 I would thus indicate my desire to bring these to
3 the Siting Committee and have it proceed or have it
4 considered as emergency regulations. And I'm just asking
5 for Commissioner comment on that, so I don't do a futile
6 act.

7 CHAIRPERSON KEESE: Speaking for myself, I would
8 be supportive of that. Did you intend to do a public
9 process a semi-public process a committee process?

10 COMMISSIONER LAURIE: Oh, sure. There was
11 complaints at the time that the language I proposed was
12 poor language. At the time I indicated that the language
13 I proposed was not language I intended to be adopted, but
14 was simply to get it on the agenda.

15 I concur with that. I have asked staff for
16 assistance in devising language that they consider to be
17 more proper and adequate to fulfill the intent. I believe
18 staff will be of assistance in that regard. Following
19 preparation of the revised language, I would bring that to
20 the Siting Committee for the Committee's consideration.

21 But I would also immediately from that point
22 schedule a workshop, and it would be, you know, I consider
23 that a workshop to be kind of a waste of time, because
24 we've talked about these things ten times already in
25 workshops in the last four years since I've been here, but

1 I'm prepared to do it again and then hopefully bring it
2 back to the Commission within 30 days, like I had hoped to
3 do on February 15th.

4 COMMISSIONER PERNELL: Mr. Chairman.

5 CHAIRPERSON KEESE: Commissioner Pernell.

6 COMMISSIONER PERNELL: Mr. Chairman, I concur
7 with Commissioner Laurie. And at the last Siting
8 Committee meeting we did take up his suggestions. And
9 staff did go through -- we went through page by page and
10 they were to get back to the Siting Committee with the
11 recommendation that he's talking about. So I would
12 certainly concur with his assessment, and I think that it
13 will be coming back to the Siting Committee.

14 CHAIRPERSON KEESE: Thank you.

15 COMMISSIONER LAURIE: That's all I had, Mr.
16 Chairman.

17 CHAIRPERSON KEESE: Well, you have Commissioner
18 Pernell and my support and Commissioner Rosenfeld's
19 support.

20 COMMISSIONER LAURIE: Thank you.

21 CHAIRPERSON KEESE: Okay.

22 We are back on Item 5, East Altamont Energy
23 Center.

24 STAFF COUNSEL DeCARLO: We were able to get in
25 touch with the Executive Director, Mr. Gary Carlton, of

1 the Central Valley Regional Water Quality Control Board.
2 He has no personal knowledge of the application -- or the
3 information provided by the applicant, so he could not
4 talk about whether or not the information they had
5 provided is sufficient to apply for a WDR.

6 However, he did state that assuming receipt of a
7 complete ROWD, they would be able to report back to the
8 Commission within 120 days.

9 CHAIRPERSON KEESE: 120 days?

10 STAFF COUNSEL DeCARLO: Right. However, I would
11 just like to note that that is not what our data adequacy
12 regs require. Our data regs specifically require all the
13 information necessary to apply for a WDR. So regardless
14 of when the Board can get back to us on their review, I
15 don't think that goes to what we're here to decide now and
16 whether the application is complete pursuant to our regs.

17 COMMISSIONER LAURIE: Mr. Chairman.

18 CHAIRPERSON KEESE: Commissioner Laurie.

19 COMMISSIONER LAURIE: I defer to Commissioner
20 Pernell.

21 COMMISSIONER PERNELL: I'm just a little confused
22 now. You're saying that the person you spoke to was the
23 Executive Director?

24 STAFF COUNSEL DeCARLO: Correct.

25 CHAIRPERSON KEESE: And you spoke to the

1 Executive Director and now he's saying he has no knowledge
2 of it?

3 STAFF COUNSEL DeCARLO: He's aware of the
4 application. He's not directly aware of the specific
5 facts of the information that they provided. He's aware
6 of the project, sorry.

7 The staff member who has been working on this
8 project from the Water Board is on vacation right now. We
9 were not able to get in touch with the other staff member.

10 CHAIRPERSON KEESE: Commissioner Laurie.

11 COMMISSIONER LAURIE: Mr. Chairman, I guess my
12 dilemma is this, it's my intent to follow the rule.

13 My dilemma is that when we have language in the
14 regs that says sufficient information to apply for, I get
15 an understanding how we have applied that definition.
16 When that definition is put into controversy and you have
17 to ask what does it mean, I can't tell you what it means.

18 I can write out one sentence I hereby apply for
19 and that sufficient information to apply for, the
20 application might get rejected. So I think the language
21 in our Regulation is poor, and we should say what we
22 really mean. And maybe we could look at that very soon
23 maybe on an emergency basis.

24 (Laughter.)

25 COMMISSIONER LAURIE: But my concern is that

1 controversy is now arisen over that verbiage. And I'm
2 stuck, because I don't know what, "sufficient information
3 to apply for," means.

4 STAFF COUNSEL DeCARLO: Actually, I'm sorry. If
5 I may clarify, it's all information necessary to apply for
6 the WDR, not just sufficient, but all information.

7 COMMISSIONER LAURIE: To apply for.

8 STAFF COUNSEL DeCARLO: We would just ask the
9 Commission to use how we've used it in the past, which is
10 implied in the recent example, by supplying the actual
11 ROWD for data adequacy.

12 CHAIRPERSON KEESE: Let's frame this first,
13 because I don't think that we're actually too far apart in
14 practical results. Mr. Ellison is saying that he would
15 like us to accept this project, and that if there is a
16 problem, they'll slow down the process.

17 Staff is saying that if we wait till June 20th,
18 they will expedite this process and get it through in the
19 same time frame as a 12-month process would have taken,
20 had we started it and approved it today.

21 STAFF COUNSEL DeCARLO: If I also might do --

22 CHAIRPERSON KEESE: Is that what I -- Mr. Larson.

23 EXECUTIVE DIRECTOR LARSON: Yes, I think that we
24 have had several. I'm a bit astonished by the discussion
25 here today, because my understanding was that it was

1 clear, you know, that we would be able to live with our
2 rules and get the information that was necessary by the
3 time that was required.

4 And that that being given, we would make every
5 effort possible to meet the deadline in terms of siting
6 this power plant or at least make the recommendation to
7 the Committee that actually has to set the schedule.

8 We've made a very strong recommendation that it
9 be within the timeframe that's desired. And this
10 discussion has been bizarre to me. And, you know, I
11 thought that it was pretty clearly understood between the
12 applicant and staff.

13 I mean, staff has only tried to observe what the
14 rules were as set down by the Commission. And they knew
15 it. The applicant knew that. It was described to them
16 earlier, February from then on there were discussions that
17 took place about the information that was desired.

18 And they decided that they didn't want to do it
19 that way, and that's what they're here today doing. And
20 I'm astonished at what they've been saying in the last
21 couple of hours. I urge you, I urge you to go along with
22 the staff in this matter.

23 COMMISSIONER LAURIE: Mr. Chairman, my only
24 comment when it comes to expedited cases, I've about had
25 my fill of treating each case differently. Everybody

1 wants an expedited case. And our staff is dying because
2 everybody wants an expedited case. We're going to follow
3 the rules. And that is my intent in this case and every
4 other case.

5 So I would ask that consideration of what we
6 think the rule is and then I would support any motion that
7 supports how we would properly implement that rule.

8 MR. ELLISON: Mr. Chairman, if I may.

9 CHAIRPERSON KEESE: Mr. Ellison.

10 MR. ELLISON: Two things. First of all, the
11 proposal that I have just heard that the case be finished
12 as in the same time frame as if it were data adequate
13 today, that is the first time we've heard anything that
14 specific. We have heard from staff, and if you look at
15 their written data inadequacy filing, you'll see that
16 there is a sort of vague statement about working with the
17 applicant to expedite that.

18 CHAIRPERSON KEESE: What I heard was more
19 specific in --

20 MR. ELLISON: You were more specific and I think
21 greater specificity is important.

22 COMMISSIONER LAURIE: I can tell you, I'm not
23 prepared to support that.

24 EXECUTIVE DIRECTOR LARSON: And I want to add
25 that from my perspective it's up to the Committee that is

1 hearing this, the Presiding member and the Committee which
2 sets the schedule on all that.

3 What I suggested was we, as a staff, would make
4 an effort in that direction, but it's up to Committee to
5 makes its decision.

6 MR. ELLISON: Well, I agree it is up to the
7 committee. I just wanted to make it clear that that kind
8 of specificity is new information to us.

9 The second thing I want to make clear and I'm not
10 going to dwell on this, but I believe Mr. Larson is, in
11 good faith, but is misinformed. The discussions that we
12 had until very recently about the information that the
13 Regional Board required are not about what would be data
14 adequacy information, but what would be required by the
15 Board ultimately to issue waste discharge requirements.

16 The last thing I'm going to say on this, again,
17 is this, the practical effect of your decision comes down
18 to this, if you decide that we're data adequate, staff in
19 all of the other areas, as well as I believe as in water,
20 but certainly in every other area, can start working on
21 this now.

22 If you say no, nothing happens until we come back
23 to you, which I believe will take 45 days. And the summer
24 of 2004 will be 45-days closer. I concur with
25 Commissioner Laurie about the pressure on staff.

1 Ironically, I think the practical effect of what you're
2 doing here is putting us in a position of trying to say
3 that staff ought to make up that time by compressing their
4 analysis and doing it faster.

5 STAFF COUNSEL DeCARLO: If I might note that as
6 far as, I believe, start of operation is our main concern,
7 start of operation. And the Commission, Chairman Keese,
8 has signed a letter stating that the Commission will allow
9 construction to occur 24 hours per day seven days a week.
10 So there's also flexibility within the construction
11 schedule, not just staff's analysis to allow for a set
12 start of operation date.

13 CHAIRPERSON KEESE: We have in front of us a
14 staff recommendation that this East Altamont Project is
15 not data adequate.

16 Do I have a motion?

17 COMMISSIONER PERNELL: Mr. Chairman, I have one
18 final question. June 20th is that our next Commission
19 meeting? We have a meeting before then, you can't get the
20 information until June 20th; is that correct?

21 MR. ELLISON: That's correct.

22 COMMISSIONER PERNELL: So regardless of what we
23 do, you still don't have the information. I mean, what it
24 sounds like what you want us to do is start working on
25 other areas, but you still don't have the information and

1 it won't be available until June 20th.

2 And then the second thing is -- I know I said
3 one, but the second thing is I've said earlier before we
4 even broke for lunch that I'm very optimistic that we
5 could make up the time, so that wasn't the first time you
6 heard that, because I said it this morning.

7 I think that, Mr. Chairman, I'm prepared to make
8 a motion so we can -- I've missed one appointment already,
9 so I have business to take care of.

10 I would move staff recommendation -- or the
11 Executive Director's recommendation to find this project
12 inadequate.

13 COMMISSIONER LAURIE: Second.

14 CHAIRPERSON KEESE: Motion by Commissioner
15 Pernell, seconded by Commissioner Laurie.

16 All in favor?

17 (Ayes.)

18 CHAIRPERSON KEESE: Opposed?

19 Adopted four to nothing.

20 CHAIRPERSON KEESE: Executive Director's Report?

21 EXECUTIVE DIRECTOR LARSON: None.

22 CHAIRPERSON KEESE: General Counsel's report?

23 CHIEF COUNSEL CHAMBERLAIN: I have none today,
24 Mr. Chairman.

25 CHAIRPERSON KEESE: Public Adviser?

1 MS. ROSS: No report today.

2 COMMISSIONER PERNELL: I have a question for the
3 Public Adviser. I understand you moved and we need to get
4 your information.

5 CHAIRPERSON KEESE: I'm sure they're going to
6 have a house warming party momentarily.

7 COMMISSIONER PERNELL: House warming. Okay, that
8 works.

9 CHAIRPERSON KEESE: All right.

10 MS. ROSS: We have moved across the street for
11 more space.

12 COMMISSIONER PERNELL: Would you Email our
13 respective advisors your address, phone number, fax and
14 all that information.

15 MS. ROSS: Yes, sir.

16 COMMISSIONER PERNELL: Thank you.

17 CHAIRPERSON KEESE: Do we have any public comment
18 at this time?

19 Seeing none, the meeting is adjourned.

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California State Energy Resources Conservation
7 and Development Commission hearing was reported in
8 shorthand by me, James F. Peters, a Certified Shorthand
9 Reporter of the State of California, and thereafter
10 transcribed into typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said hearing nor in any
13 way interested in the outcome of said hearing.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 11th day of June, 2001.

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